

**From:** [REDACTED]  
**Sent:** 11 February 2021 09:38  
**To:** James Hamilton [REDACTED]  
**Subject:** FW: Mr Hamilton Interview- follow up

Hi James,

Please see further material from the Perm Sec- I had sent on some of this earlier but this is the final version.

Best wishes,

[REDACTED]

**From:** Bruce A (Andrew) <[Andrew.Bruce@gov.scot](mailto:Andrew.Bruce@gov.scot)>  
**Sent:** 09 February 2021 17:37  
**To:** [REDACTED] <[\[REDACTED\]@gov.scot](mailto:[REDACTED]@gov.scot)>  
**Cc:** Permanent Secretary <[PermanentSecretary@gov.scot](mailto:PermanentSecretary@gov.scot)>  
**Subject:** RE: Mr Hamilton Interview- follow up

[REDACTED]

Following Mr Hamilton's interview with the Permanent Secretary on 27 January, you highlighted a number of points where it was agreed additional material would be provided. As agreed, where possible I have provided links to material provided to the Committee on the Scottish Government's Handling of Harassment Complaints.

- **Links to documentation previously sent to the Committee on the development of the procedure, and the Perm Sec's role in this.**

Statement on development of Procedure:

[SP+SGHHC1+Phase+1+Written+Statement+19+June+2020.pdf \(www.gov.scot\)](#)

Key docs relevant to Perm Sec's role in development of Procedure (these can be found along with all the other phase 1 docs here [Scottish Government Handling of Harassment Complaints: FOI release - gov.scot \(www.gov.scot\)](#)):

- YY093 [SP+SGHHC1+YY093+-+3+-+Redacted+or+Watermarked+Version.pdf \(www.gov.scot\)](#)
- YY002 [SP+SGHHC1+YY002+-+3+-+Redacted+or+Watermark+Version.pdf \(www.gov.scot\)](#)
- XX027 [SP+SGHHC1+XX027+-+3+-+Redacted+or+Watermarked+Version.pdf \(www.gov.scot\)](#)
- XX036 [SP+SGHHC1+XX036+-+3+-+Redacted+or+Watermark+version.pdf \(www.gov.scot\)](#)

- YY044 [SP+SGHHC1+YY044+-+3+-+Redacted+or+Watermarked+Version.pdf \(www.gov.scot\)](#)
  - XX021 [SP+SGHHC1+XX021+-+3+-+Redacted+or+Watermarked+Version.pdf \(www.gov.scot\)](#)
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  - XX064 [SP+SGHHC1+XX064+-+3+-+Redacted+or+Watermarked+Version.pdf \(www.gov.scot\)](#)
  - YY004 [SP+SGHHC1+YY004+-+3+-+Redacted+or+Watermark+version.pdf \(www.gov.scot\)](#)
  - YY016 [SP+SGHHC1+YY016+-+3+-+Redacted+or+Watermark+version.pdf \(www.gov.scot\)](#)
  - YY066 [SP+SGHHC1+YY066+-+3+-+Redacted+or+Watermark+version.pdf \(www.gov.scot\)](#)
  - YY085 [SP+SGHHC1+YY085+-+3+-+Redacted+or+Watermark+Version.pdf \(www.gov.scot\)](#)
  - YY064 [SP+SGHHC1+YY064+-+3+-+Redacted+or+Watermark+Version.pdf \(www.gov.scot\)](#)
  - YY010 [%28Possible+Duplicate%29+SP+SGHHC1+YY010+-+3+-+Redacted+or+Watermark+version.pdf \(www.gov.scot\)](#)
  - YY011 [SP+SGHHC1+YY011+-+3+-+Redacted+or+Watermarked+version.pdf \(www.gov.scot\)](#)
  - YY012 [SP+SGHHC1+YY012+-+3+-+Redacted+or+Watermark+version.pdf \(www.gov.scot\)](#)
  - **The letter from Jeremy Heywood to all Perm Sec's asking them to consider if their department's procedures needed updating in the light of the Me Too movement, was also mentioned.**
- [SP+SGHHC1+YY006+-+3+-+Redacted+or+Watermark+version.pdf \(www.gov.scot\)](#)
- **Timelines of events relating to the procedure and associated events - particularly in relation to the questions on when arbitration/mediation was raised.**

Development of procedure timeline:

[Timeline for Statement 1 - 14 August\(1\).pdf \(parliament.scot\)](#)

Investigation of complaints timeline (this is the most relevant to arbitration/mediation) NB timeline is after the statement:

[SGHHC Further Written Statement Investigation of Complaints - 18 December 2020Redacted.pdf \(parliament.scot\)](#)

Judicial review timeline (this is the last and most detailed JR timeline):

[SP SGHHC - JR - Additional timeline - 26 October 2020 - Watermark version \(JR\).pdf \(parliament.scot\)](#)

Ministerial Code referral timeline:

[SP SGHHC - Ministerial Code timeline - 26 October 2020 - Watermark version \(MC\).pdf \(parliament.scot\)](#)

- **Statistics on harassment complaints, against both Ministers and civil servants, preferably disaggregated by type of complaint (e.g. bullying, discrimination, sexual allegations etc)**

The information requested here is set out in the attached document provided by the SG's People Directorate. This document also highlights how this data has been made public – either through FOIs or PQs.

- **Views on any possible updates to the Ministerial Code**

Mr Hamilton also asked the Permanent Secretary about possible revisions to the Ministerial Code. The content of the Code is, of course, a matter for the First Minister rather than the Permanent Secretary. As is standard practice, the First Minister appointed by Parliament after the May Election will be expected to publish a new edition of the Ministerial Code early in the new Parliamentary term. This would provide an opportunity for the First Minister to consider incorporating any changes Mr Hamilton may recommend in his report.

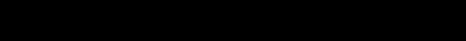
I hope this covers everything but please let me know if any further material is required.

Thanks

Andy

**Andy Bruce**  
**Principal Private Secretary to the Permanent Secretary**  
**Scottish Government**

  
[andrew.bruce@gov.scot](mailto:andrew.bruce@gov.scot)

**From:**  [@gov.scot](mailto:andrew.bruce@gov.scot)>

**Sent:** 27 January 2021 15:58

**To:** Bruce A (Andrew) <[Andrew.Bruce@gov.scot](mailto:Andrew.Bruce@gov.scot)>

**Subject:** Mr Hamilton Interview- follow up

Hi Andy,

As discussed, please see attached list of questions.

I should be able to provide a full list of actions once I have reviewed the recording, but here is a list of what I noted down.

- In the discussion, it was suggested that documentation previously sent to the Committee on the development of the procedure, and the Perm Sec's role in this, could be shared with Mr Hamilton. A letter from Jeremy Heywood to all Perm Sec's asking them to consider if their department's procedures needed updating in the light of the Me Too movement, was also mentioned. As ever, links to where material has been provided to the Committee and published by them are fine.
- It would also be helpful to share statistics on harassment complaints, against both Ministers and civil servants, preferably disaggregated by type of complaint (e.g. bullying, discrimination, sexual allegations etc).
- Timelines of events relating to the procedure and associated events were also mentioned as something that could be provided- this was in relation to the questions on when arbitration/mediation was discussed.
- Finally, the Perm Sec said she would consider the question on possible updates to the Ministerial Code and provide a written response.

Happy to discuss.

Best wishes,





## Bullying, Discrimination and Sexual Harassment Statistics

### General

The HR People Advice and Wellbeing team utilises a casework tracker in which they record formal cases relating to staff conduct (discipline and Fairness at Work). The tracker was created in 2007 and while some data is available for the period before then, it is less reliable.

Please note that information is not held centrally about complaints which are dealt with locally and on an informal basis.

### Bullying

Information about bullying has been published in a recent PQ and also in response to FOI requests.

#### PQ

PQ S5W-33565 from Alex Cole-Hamilton was published on 11 December 2020 and gives the most recent data:

**Alex Cole-Hamilton (Edinburgh Western) (Scottish Liberal Democrats):** To ask the Scottish Government how many cases of bullying in its directorates and agencies have been recorded and investigated in each of the last 10 years.

**Kate Forbes:** As an employer, the Scottish Government is committed to ensuring the workplace is one where all colleagues are valued and treated with respect and dignity. Our policies and procedures allow managers to deal with concerns about bullying at an early stage and on an informal basis, where appropriate. There is no requirement to report informal action to HR and therefore no information is held centrally about cases that have been dealt with informally.

Information about formal cases which have been recorded and investigated is as follows:

| Year                   | 2020 | 2019 | 2018 | 2017 | 2016 | 2015 | 2014         | 2013         | 2012         | 2011         | 2010 |
|------------------------|------|------|------|------|------|------|--------------|--------------|--------------|--------------|------|
| Number of Formal Cases | 5    | 8    | 11   | 9    | 10   | 9    | Fewer than 5 | Fewer than 5 | Fewer than 5 | Fewer than 5 | 5    |

Note:

This covers staff employed on Scottish Government Main and Scottish Government Marine terms and conditions of employment and senior civil servants. SG Main is made up of the Core Directorates and the following Agencies:

Accountancy in Bankruptcy  
Disclosure Scotland  
Education Scotland  
Scottish Public Pensions Agency  
Student Awards Agency for Scotland  
Transport Scotland  
Social Security Scotland

Since the PQ was published, there have been no additional formal complaints of bullying.

### **Discrimination**

Since 2016\* there have been 10 formal complaints of discrimination. These complaints have either been raised through the Fairness at Work policy or by ex-employees through a claim to the Employment Tribunal.

Information about discrimination since 2016 and broken down by year was requested in an FOI from David Raine on 21 February 2020. The FOI response stated 'fewer than 5' cases each year (actual numbers were not disclosed due to the small numbers involved).

\* As we've only received 1 FOI about discrimination, the data before 2016 hasn't been assessed.

### **Sexual Harassment**

Since 2007 there have been 15 formal complaints of sexual harassment - 13 of those complaints were against staff members and 2 were against the FFM.

Information about sexual harassment has been published in a PQ and also in response to FOI requests.

### **PQ**

PQ S5W-18396 from Monica Lennon (published on 20 September 2018) asked how many complaints of sexual assault or sexual harassment had been received against Ministers, Special Advisers and staff.

The response to the PQ confirmed that there had been **2 complaints against Ministers and 11 complaints against staff** (since 2007). There had been no complaints against Special Advisers.

### **FOI**

The response to an FOI from [REDACTED] (Scottish Political Reporter) in June 2020 confirmed that there had been a further **2 complaints about staff** in the period 20 September 2018 (the date of the Monica Lennon PQ) to 11 June 2020 (the date of the response to his FOI).

An FOI from [REDACTED] on October 2020 confirmed that there had been no further complaints of sexual harassment since the date of the last FOI.

There have been no complaints of sexual harassment since the date of these FOIs.

Complaints are investigated and disciplinary action may result. The disciplinary penalties imposed against staff range from a written warning to dismissal.

The PQ and FOIs also asked for information about sexual assault or rape. The response given in relation to potential criminal matters is that the Scottish Government, as an employer, 'does not make determinations about whether the nature of a complaint constitutes a sexual assault or rape as that is rightly a matter for Police Scotland to determine. We do not therefore have a record of any complaints that have been recorded as sexual assault or rape'.

## RE: Correspondence from Mr Hamilton

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**From:** [REDACTED]@gov.scot>  
**To:** Alex Salmond [REDACTED]  
**Date:** Fri, 12 Feb 2021 12:40:28 +0000

Dear Mr Salmond,

Thank you for your response. I have passed this to Mr Hamilton, who is happy that you provide written statements to the supplementary questions. However, if you would like to discuss matters Mr Hamilton would also be happy to arrange a video interview.

Best wishes,

[REDACTED]

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**From:** Alex Salmond [REDACTED]  
**Sent:** 11 February 2021 09:56  
**To:** [REDACTED]@gov.scot>  
**Subject:** Re: Correspondence from Mr Hamilton

Dear [REDACTED]

Thank you for your note. I enclose a reply to Mr Hamilton.

Best Wishes

Alex Salmond

Mr James Hamilton  
Independent Adviser on the Scottish Ministerial Code

11th February 2021

Dear Mr Hamilton

Thank you for your letter of 9th February.

If I may I shall reply within a few days when I have the opportunity to consult my notes. In addition, in preparing evidence for the Parliamentary Inquiry, I have come across some further documentary corroboration for points which I have already made.

I will be happy to send you this material along with the answers to your questions and provide a video interview as well if required.

Yours for Scotland

Rt Hon Alex Salmond

Sent from my iPad

On 9 Feb 2021, at 17:03, [REDACTED]@gov.scot wrote:

Dear Mr Salmond,

Please see attached correspondence from Mr Hamilton.

Best wishes,

[REDACTED]

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<Correspondence for Alex Salmond- 9 Feb 2021.docx>

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**From:** James Hamilton [REDACTED]  
**Sent:** 15 February 2021 16:19  
**To:** [REDACTED]  
**Subject:** Draft Report [UNSCANNED]

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**Report of the Independent Adviser on the Scottish Ministerial Code into the self-referral by the First Minister Ms Nicola Sturgeon into allegations that she breached the Code in respect of meetings and discussions with the former First Minister Mr Alex Salmond between 29 March 2018 and 18 July 2018 and related matters**

## Table of Contents



## **The Remit for the Investigation**

## **The remit for the investigation**

The remit for the self-referral to me by the First Minister under the Scottish Ministerial Code was set out as follows by the Deputy First Minister, Mr John Swinney, in a reply to a parliamentary question in the Scottish Parliament on 3 August 2020.

“It has been alleged that the First Minister breached the Scottish Ministerial Code in that she failed to feed back the basic facts of meetings and discussions held with Alex Salmond to her private office as required by sections 4.22 and 4.23 of the Code. The meetings and discussions in question took place on:

29 March 2018 – Meeting between Ms Sturgeon and Geoff Aberdein, former Chief of Staff to Mr Salmond, Scottish Parliament

2 April 2018 - Meeting between Ms Sturgeon and Mr Salmond at Ms Sturgeon’s home.

23 April 2018 - Telephone conversation between Ms Sturgeon and Mr Salmond.

7 June 2018 - Meeting between Ms Sturgeon and Mr Salmond at SNP Conference, Aberdeen.

14 July 2018 - Meeting between Ms Sturgeon and Mr Salmond at Ms Sturgeon’s home.

18 July 2018 - Telephone conversation between Ms Sturgeon and Mr Salmond.

It is has been further suggested that, in light of those meetings, the First Minister may have attempted to influence the conduct of the investigation then being undertaken by the Permanent Secretary into allegations made against Mr Salmond under the Procedure for Handling of Harassment Complaints involving Current or Former Ministers (“the Procedure”).

### **Scottish Ministerial Code**

The key relevant extracts from the Code are:

1.6. Ministers are personally responsible for deciding how to act and conduct themselves in the light of the Ministerial Code and for justifying their actions to Parliament and the public. The First Minister is, however, the ultimate judge of the standards of behaviour expected of a Minister and

of the appropriate consequences of a breach of those standards. Although the First Minister will not expect to comment on every matter which could conceivably be brought to his or her attention, Ministers can only remain in office for so long as they retain the First Minister's confidence.

1.7. Where he or she deems it appropriate, the First Minister may refer matters to the independent advisers on the Ministerial Code to provide him or her with advice on which to base his or her judgement about any action required in respect of Ministerial conduct. The findings of the independent advisers will be published.

#### Contacts with External Individuals and Organisations, including Outside Interest Groups and Lobbyists

4.22 Ministers meet many people and organisations and consider a wide range of views as part of the formulation of Government policy. Meetings on official business should normally be arranged through Private Offices. A private secretary or official should be present for all discussions relating to Government business. Private Offices should arrange for the basic facts of formal meetings between Ministers and outside interest groups to be recorded, setting out the reasons for the meeting, the names of those attending and the interests represented. A monthly list of engagements carried out by all Ministers is published three months in arrears.

4.23 If Ministers meet external organisations or individuals and find themselves discussing official business without an official present – for example at a party conference, social occasion or on holiday – any significant content (such as substantive issues relating to Government decisions or contracts) should be passed back to their Private Offices as soon as possible after the event, who should arrange for the basic facts of such meetings to be recorded in accordance with paragraph 4.22 above.

The First Minister has, accordingly, referred the matter for consideration by one or both Independent Advisers for advice on which to base her judgement about any action required in accordance with the Code.

#### Remit

The remit for the referral is to:

Review any relevant documentation relating to the meetings and discussions listed above.

Interview any Minister or official of the Scottish Government, including Special Advisers, who may have any knowledge of the facts and content of the meetings and discussions, to assess whether the Ministerial Code is

engaged and, if so, whether the terms of the Code have been complied with.

Interview any relevant person outwith the Scottish Government, including the former First Minister, Alex Salmond, who may have information relating to the facts and content of the meetings and discussions.

Determine if there is any evidence that the First Minister attempted to use information discussed during those meetings and discussions to influence the conduct of the investigation being undertaken by the Permanent Secretary into allegations made against Mr Salmond under the Procedure. Provide the Deputy First Minister with a report setting out the findings and conclusions with regard to:

- i. whether the Ministerial Code is engaged regarding the meetings and discussions;
- ii. whether there has been any breach of the Code and the nature of any such breach; and
- iii. if a breach has occurred, advice on the appropriate remedy or sanction.

The Independent Adviser is further invited to consider and offer views on whether the Ministerial Code might need revision to reflect the terms of the Procedure and the strict limitations it places on the involvement of the First Minister in cases which fall to be considered under the Procedure.

#### Timing

The Independent Adviser is invited to commence the investigation and submit a report as soon as possible.”

In accordance with the remit I sought and received written observations from the following persons: the First Minister, Ms Nicola Sturgeon; the former First Minister, Mr Alex Salmond; the permanent Secretary to the Scottish Government, Ms Leslie Evans; Ms Liz LLoyd, a Special Adviser to the First Minister, Mr Geoffrey Aberdein, a former Special Adviser and Chief of Staff to the former First Minister, Mr Kevin Pringle, Mr David Clegg, Mr Stuart Nicholson and Mr Peter Murrell. All of these witnesses gave me full co-operation and answered follow-up questions where necessary. I carried out follow-up interviews with a number of the witnesses where I considered clarifications were required. One person who had attended the first meeting between the First Minister and the Deputy First Minister declined to make a statement, but since he had attended that meeting in the capacity of a legal adviser to Mr Salmond this is unsurprising. I had, in any event, no power to compel any person to cooperate with the investigation

**Commented [1]:**  
Is it necessary to include anything about subsequent clarifications which in effect widen the remit?

## Report and Findings

## 1. Brief summary of the factual background

1.1. The principal factual background to the questions raised in the remit is as follows:

Mr Alex Salmond retired as First Minister of Scotland in November 2014 and was succeeded as First Minister by Nicola Sturgeon.

Commented [2]:  
Check date

1.2. In December 2017 the Scottish Government adopted a new procedure entitled "Handling of harassment complaints involving current or former ministers" (subsequently referred to in this report as the Procedure) which is described as an "internal procedure agreed in December 2017 and published in February 2018 on the Scottish Government intranet". Since 23 August 2018 it is also published on the Scottish Government's website at <https://www.gov.scot/publications/handling-of-harassment-complaints-involving-current-or-former-ministers/>.

1.3. By a letter dated 7 March 2018 Mr Alex Salmond was informed that an internal investigation had been commenced under the Procedure on 17 January 2018 in respect of two formal complaints made by civil servants about his behaviour during his time as First Minister.

1.4. [REDACTED] Mr Geoffrey Aberdeen, former Chief of Staff to Mr Salmond, met [REDACTED]

[REDACTED] Mr Aberdein says [REDACTED] informed him that complaints had been made against Mr Salmond. [REDACTED] disputes this. Having discussed the matter with other contacts Mr Aberdein decided to inform Mr Salmond of the allegations and did so by telephone later that week. By that time Mr Salmond had already received the letter of 7 March informing him of the complaints.

1.5. On 29 March 2018 there was a meeting between the First Minister and Mr Aberdein, which took place in the First Minister's office in the Scottish Parliament [REDACTED].

1.6. There then followed a series of meetings and telephone conversations between the First Minister and Mr Salmond.

1.7. The first of these meetings took place in the evening of 2 April 2018 at the First Minister's home. Mr Aberdein and Ms Lloyd were present as well as Mr Duncan Hamilton who was acting as a legal adviser to Mr Salmond.

1.8. On 23 April 2018 there was a telephone conversation between the First Minister and Mr Salmond.

1.9. On 23 April 2018 there was a second telephone conversation between the First Minister and Mr Salmond.

1.10. On 7 June 2018 there was a second meeting between the First Minister and Mr Salmond during the Scottish National Party Conference which took place in Aberdeen.

1.11. On 14 July 2018 there was a third meeting between the First Minister and Mr Salmond which took place at the First Minister's home.

1.12. On 18 July 2018 there was a third and final telephone conversation between the First Minister and Mr Salmond.

## **2. The adoption of the Procedure for handling complaints against Ministers and former Ministers**

2.1. In December 2017 the Scottish Government adopted a procedure entitled “Handling of harassment complaints involving current or former ministers.” It is described as an “internal procedure agreed in December 2017 and published in February 2018 on the Scottish Government intranet” and is frequently referred to simply as “the Procedure” and will be referred to as such in this report. Since 23 August 2018 the Procedure is also published on the Scottish Government’s website at <https://www.gov.scot/publications/handling-of-harassment-complaints-involving-current-or-former-ministers/>.

2.2. The Procedure was adopted following an extensive process of consultation involving the First Minister, the Scottish Cabinet, the Permanent Secretary and other senior officials of Scottish Government, the Scottish Parliament, the Scottish Government’s People Directorate, the Scottish Government’s Directorate for Legal Services, Scottish Government trade union officials, the Chief of Staff and Special Adviser to the First Minister. The draft was also shared with the Cabinet Office of the United Kingdom Government and the Scottish Government Trade Unions. The process of developing this policy and the consultations involved are described in some detail in a document entitled *Response to Committee of the Scottish Government Handling of Harassment Complaints* (the Response Document) dated June 2020 prepared in response to a request from the Scottish Parliament’s Committee on Scottish Government Handling of Harassment Complaints.<sup>1</sup>

2.3. The Response Document includes the following explanations of the motive behind the policy review:-

Tackling bullying and harassment, and ensuring that the Scottish Government is a more diverse and inclusive organisation, sits at the heart of the Scottish Government’s organisational strategy, as it did at the time covered by this statement...

The 2016 People Survey<sup>2</sup> continued to show that a significant minority of staff (10%) said they had experienced bullying or harassment, but combined with the very low number of formal complaints raised<sup>3</sup>, this

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<sup>1</sup> Response to Committee of the Scottish Government Handling of Harassment Complaints (Response Document) see

: SP+SGHHC1+Phase+1+Written+Statement+19+June+2020.pdf (www.gov.scot)

<sup>2</sup> <https://www2.gov.scot/Topics/Research/by-topic/public-services-and-gvt/Employee-Survey/PeopleSurvey-2016>

<sup>3</sup> <https://www.gov.scot/publications/foi-17-02235/>



suggested a possible lack of awareness of or confidence in existing processes and procedures. This led to the appointment in spring 2017 of a Director to champion work to tackle bullying and harassment within the organisation. The focus at that time was understanding and addressing the cultures that can allow bullying and harassment to occur and to raise awareness about the drivers for positive and inclusive cultures across the organisation.<sup>4</sup>

A wider societal focus on sexual harassment and sexual abuse had been increasing at the same time, and in early October 2017 reactions to sexual abuse allegations against Harvey Weinstein brought widespread exposure to the #Me Too movement, which was seeking to tackle sexual harassment and abuse by making the scale of the problem clear. A number of allegations of sexual harassment and assault were also reported in Westminster and the Scottish Parliament during October and November 2017. These issues were a matter of considerable concern across Government and the Parliament, as well as among individual MSPs, and the public at large.<sup>5</sup>

2.4. The review process identified a major gap in the then existing procedure of dealing with sexual harassment claims, that is, that there was no mechanism for dealing with historic claims against former Ministers. This gap is described in the Response Document as follows:-

19. The review process in 2017 identified that while options were available to consider potential sexual harassment complaints about serving Ministers, no such option was available in respect of former Ministers. Those involved in the review process identified that there was a gap in the coverage in terms of having a procedure that could be deployed should any historical complaints arise in Scotland. It was recognised that a number of the allegations that had emerged at Westminster related to the actions of former Ministers during their time in office.

20. On 4 November 2017, during this review process, a Scottish Government Minister resigned his Ministerial post, following allegations made from outside the Scottish Government about his personal conduct. This example reinforced for the Scottish Government the importance of making sure that it had policies and procedures in place which were capable of responding appropriately to such allegations should they arise within the Scottish Government.

21. Following the identification of that gap in the overall framework, work was put in hand to determine the most effective way to fill it...As a result, Scottish Government officials began work on the development of a new

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<sup>4</sup> Response to Committee of the Scottish Government Handling of Harassment Complaints, paragraph 4.

<sup>5</sup> Ibid., paragraph 5

procedure that could be applied in respect of former Ministers. The first version of the procedure was created on 7 November, which was the beginning of an iterative and collaborative drafting process. In the course of the drafting of that procedure it was decided to broaden its scope to also include serving Ministers<sup>6</sup> so that there would be a single procedure that could be applied in respect of harassment complaints involving Ministers, whether current or former. This was also consistent with existing plans to review Fairness at Work. Later, following a view from the First Minister and Permanent Secretary, the procedure was amended to cover all forms of harassment, not just sexual harassment.<sup>7</sup>

2.5. It appears that its drafters did not consider that there might be any legal difficulty in applying the Procedure, designed and described as an internal Scottish Government procedure, to former Ministers who were no longer in a contractual or statutory relationship with Scottish Government and in respect of whom the previously existing harassment complaints procedure had already expired at the time of their retirement. I have not seen any legal advice which may have been provided to Scottish Government but we do know from the Response Document that Scottish Government's lawyers were consulted as part of the approval process of the Procedure.

2.6. However, when complaints were laid against the former First Minister, Mr Alex Salmond, he disputed the right of Scottish Government to apply the Procedure to him. Among many objections which he raised to the Procedure was the claim that he could not, as a former office-holder, legitimately have been made amenable to a disciplinary procedure which had been introduced on an administrative basis without any legislative underpinning. He also made a strong objection to the absence of a procedure for mediation although such an option had existed in the earlier scheme which had been replaced by the Procedure and was retained in the case of serving Ministers but not for former Ministers. Another issue was the difficulty of defending oneself while the option of a criminal complaint remained a live possibility. At least some of the issues raised by Mr Salmond raised questions of real substance rather than merely technical objections. In addition Mr Salmond claimed there had been serious irregularities in the procedures which had been followed.

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<sup>6</sup> <https://secure.objectiveconnect.co.uk/share/9456-dd30-0a6c-46a6-bf88-64e2-fb7a9ff9/document/8a6f-68e1-b8b4-41c7-a936-2a01-8aa7-57ea>

<sup>7</sup> <https://secure.objectiveconnect.co.uk/share/9456-dd30-0a6c-46a6-bf88-64e2-fb7a9ff9/document/e6e3-41bf-1320-4cf0-94de-6702-045d-7286>

3.7. It not necessary for the purposes of my remit for me to express a view on the merits of any of Mr Salmond's claims These were matters which ultimately only the Scottish courts could have decided. In the event the Scottish Government withdrew its opposition to Mr Salmond's judicial review proceedings after its own counsel, who it appeared had advised that the Government's defence was untenable, threatened to withdraw from the case. Their advice has not been released.

2.8. I understand that so far as concerns the future of the complaints procedure in respect of former Ministers and any amendments that may be required or thought desirable in the light of the failed disciplinary proceedings against Mr Salmond a separate enquiry led by [redacted] is dealing with this question.

Commented [3]:  
Insert reference

2.9. Any questions concerning any political responsibility for the events which occurred in relation to the adoption of the Procedure are matters for the Scottish Parliament and I do not express any opinion on these.

2.10. My brief is to enquire into whether the First Minister was in breach of the Ministerial Code. It has been made clear that in this I am not confined to the specific question of whether [redacted] of the Code was breached as had been the original scope of my remit but am expected to enquire whether any breach has been committed by the First Minister.

Commented [4]:  
Insert reference

2.11. I can find nothing in the conduct of the First Minister in respect of the introduction of the Procedure which could be considered to be a breach of the Code. The Response Document has set out the reasons for the introduction of the Procedure. In my opinion those reasons demonstrated a proper concern for the objective of strengthening the procedures for dealing with cases of harassment and bullying, especially sexual harassment, and it was perfectly proper and appropriate for the First Minister the lead this process and to give it every support possible. The process was supported by advice from the most senior Scottish Government officials, including the legal department, as well as experts in the area of human resources and the handling of complaints. In my opinion the First Minister was entitled to rely on the advice she received. If there was any error in that advice- and I offer no opinion on that question- she cannot be regarded as personally in breach of the Ministerial Code because she relied on advice which was not correct. I accept the First Minister's evidence that at the time the Procedure was adopted she was not aware of any complaints or impending complaints against Mr Salmond.

2.12. A key principle in the Procedure is to avoid any risk of political interference in complaints and in particular to exclude the First Minister from any involvement in a complaint against a former Minister. In my opinion this is a legitimate and a proportionate objective of the Procedure.

2.13. As a result of this provision the First Minister excluded herself from being informed of or involved in dealing with any complaints against former Ministers which of course included the two complaints against Mr Salmond, as well as the manner in which the Scottish Government defended the legal claims brought by Mr Salmond and the handling of criminal complaints against him. In my opinion she was justified and acted properly in so excluding herself. Apart altogether from the provisions of the Procedure her long political association and personal friendship with Mr Salmond would have placed her in an invidious position and left herself open to accusations of bias and partiality had she allowed herself to become involved.

2.14. As already referred to above Mr Salmond has made a number of very serious allegations about the manner in which the complaints were investigated and dealt with including accusations of serious impropriety. I make no findings about the truth of any of these allegations which are still the subject of enquiries by the **Committee** of the Scottish Parliament. I accept the evidence of the First Minister that she had no involvement in these matters. I do not consider that the First Minister has any responsibility under the Ministerial Code for any shortcomings or wrongdoing in the behaviour of other persons in relation to matters from which she has properly excluded herself from any involvement.

Commented [5]:  
Insert correct title of Committee.

### 3. The operation of the Procedure

3.1. The Procedure envisages a number of options for Scottish Government employees claiming to be victims of harassment by serving or former Ministers. "An individual may choose to raise an issue involving a current or former Minister through a number of mechanisms. These may include a senior manager of your choosing, direct to HR or a Trade Union representative" (Paragraph 1). Options available to the staff member include asking that their concern is acknowledged but without further action being taken, or indicating that they wish to make a formal complaint (Paragraph 2). It is emphasised that at all times the staff member or the



Scottish Government itself is free to make a complaint directly to the police Paragraphs 2.1, 18 and 19.

3.2. In the event that a formal complaint of harassment is received against a former Minister, the Director of People will designate a senior civil servant as the Investigating Officer to deal with the complaint. That person will have had no prior involvement with any aspect of the matter being raised. The role of the Investigating Officer will be to undertake an impartial collection of facts, from,(sic) the member of staff and any witnesses, and to prepare a report for the Permanent Secretary. The report will also be shared with the staff member. (Paragraph 10).

3.3. If the Permanent Secretary considers that the report gives cause for concern over the former Minister's behaviour towards current or former civil servants the former Minister should be provided with details of the complaint and given an opportunity to respond. The former Minister will be invited to provide a statement setting out their recollection of events to add to the record. They may also request that statements are taken from other witnesses. If additional statements are collected the senior officer will revise their report to include this information and submit this to the Permanent Secretary and share with the staff member. The Permanent Secretary will consider the revised report and decide whether the complaint is well-founded. The outcome of the investigation will be recorded within the SG. The Permanent Secretary will also determine whether any further action is required; including action to ensure lessons are learnt for the future.(Paragraph 11).

3.4. For complaints involving a former Minister who is a member of the Party of the current Administration, the Permanent Secretary will inform the First Minister both in this capacity and in the capacity of Party Leader, of the outcome when the investigation is complete. The First Minister will wish to take steps to review practice to ensure the highest standards of behaviour within the current Administration (Paragraph 12).

3.5. The Procedure not only does not envisage the notification of complaints made against former Ministers to the First Minister prior to the completion of the investigation but is designed to preclude her from having any role in the process. The purpose of this provision is clearly to avoid either the reality or the appearance of political interference with the process of an investigation and how a complaint is dealt with, and to ensure the impartiality of the process. In my opinion this is a legitimate objective of the scheme.

Commented [6]:  
There is a need here for information on how the Procedure was adopted.

#### 4. Mr Aberdein and [REDACTED] meetings [REDACTED]

4.1. There were meetings [REDACTED]  
[REDACTED] Mr Geoffrey Aberdein who had been Chief of Staff from 2011 to December 2014 during Mr Salmond's time as First Minister and who had left government service when Mr Salmond resigned as First Minister following the SNP's defeat in the independence referendum. [REDACTED]

Commented [7]:  
[REDACTED]

4.2. [REDACTED]  
[REDACTED]

4.3. [REDACTED]  
[REDACTED]

4.4. [REDACTED] in the light of the "#metoo" movement, the increased focus on issues of harassment and in particular historic harassment, and the creation of a new procedure in government to address such issues, [REDACTED] if there was anything of that nature, from his time as Chief of Staff, [REDACTED]

4.5. A colleague had mentioned to [REDACTED] in passing the previous week that the content of an official briefing provided for First Minister's Questions on the issue of sexual harassment had changed. Where the briefing had previously given a clear answer of "No" to the question of whether there had been any complaints about current or former ministers, and had stated that fewer than 5 cases of sexual harassment had been reported in the civil service the colleague had noticed that both of those statements had been removed, and a line about concerns having been raised and being considered in line with procedures was now the line that should be used. That line could have referred to either staff or ministers and did not state that an investigation was underway into a former minister or into Alex Salmond.

4.6. [REDACTED] accepted that [REDACTED] was aware at that time of growing rumours about Mr Salmond but says that [REDACTED] was not at that stage aware of actual complaints made against him. [REDACTED]

4.7. Whilst discussing #metoo in general, [REDACTED] asked Mr Aberdein whether he was aware of anything [REDACTED] should be concerned about. According to [REDACTED] Mr Aberdein had no knowledge in relation to any other minister or former minister, but referred in general terms to two alleged incidents involving Mr Salmond. One was not sexual in nature.

4.8. In relation to the incident that was sexual in nature [REDACTED] said that Mr Aberdein gave [REDACTED] a general description of the incident which he presented to [REDACTED] as being in his view a minor incident, [REDACTED] says he named the person concerned. [REDACTED] says that he did not seem to think it was significant. [REDACTED]

4.9. The conversation about #metoo also included a 13 November 2017 allegation on Sky News that female staff at Edinburgh airport had expressed concern to airport managers about what they regarded as “inappropriate behaviour” which was not specified in the report. Mr Salmond was reported as “strongly denying” any wrongdoing and nothing more was ever heard of this matter. [REDACTED] referred to what [REDACTED] called “jungle drums” in the media about Mr Salmond ever since the #metoo movement became prominent in October 2017. [REDACTED] had apparently been approached on a number of occasions by reporters to ask if there had ever been complaints about ministers in general and Mr Salmond in particular.

4.10. According to [REDACTED] Mr Aberdeen suggested that Mr Salmond would not cope well with such allegations, but said he wasn’t aware of anything further, and that he and Mr Salmond weren’t really in touch that much anymore and there was no other discussion on the issue.

4.11. Mr Aberdeen in his account makes no mention of discussing any of these matters [REDACTED] He states that any reference to Alex Salmond in that discussion was in the context of media coverage, particularly concerning Alex Salmond’s decision to host a show on Russian television around that time which was the subject of much controversy. It is agreed by [REDACTED] that this subject was indeed discussed at this meeting.

4.12. Mr Aberdeen, however, believes that the main purpose of [REDACTED]

[REDACTED]

4.13. [REDACTED]

[REDACTED]

4.14. [REDACTED] explains that [REDACTED] with increasing concerns that whether or not there was currently any investigation into Mr Salmond, it was possible there could be in the future



as it was clear there could be something to investigate. [REDACTED]

4.15. [REDACTED] says that [REDACTED] indicated that [REDACTED] had reason to believe there might be a complaint and it could be about Mr Salmond. [REDACTED]

[REDACTED] says that Mr Aberdeen took [REDACTED] to mean that someone within government had told [REDACTED] of a complaint and began to name individuals who might have told [REDACTED]. He suggested that he would phone some contacts who had previously worked with him who would tell him if there was a complaint. [REDACTED] told him [REDACTED] did not know if there was a complaint and advised against making such calls as it seemed highly improper. If this is indeed what happened it would be hardly surprising that Mr Aberdeen misunderstood [REDACTED]

4.16. Mr Aberdeen has a very different recollection of this meeting. He states that it is his clear recollection that [REDACTED] informed him that the Scottish Government had received official complaints about Mr Salmond. He says that [REDACTED] told him that [REDACTED] did not know the full details of the complaints but that [REDACTED] did tell him there were two individual complainers and named one of them. [REDACTED]

4.17. If it were a simple matter of comparing the two accounts it would not be possible to be completely certain whose account is correct, although Mr Aberdeen's account is more straightforward than the rather complicated account given by [REDACTED]. It is difficult to see how there can have been a misunderstanding as to what was actually said despite [REDACTED] elaborate explanation of how [REDACTED] thinks that Mr Aberdeen misunderstood what [REDACTED] was saying.

4.18. However, whether it is the case that [REDACTED]

[REDACTED] There is no evidence to dispute this account. If Mr Aberdein's account is correct I think it most unlikely in any event that [REDACTED]

4.19. [REDACTED]

[REDACTED] was well aware that under the Procedure harassment complaints were required to be treated in confidence and the First Minister was required not to be involved in any way in dealing with such complaints. It seems to me unlikely that the First Minister would have welcomed being potentially compromised by having rumour or gossip about such a matter [REDACTED]

4.20. Mr Aberdein states that it was [REDACTED]

[REDACTED] Furthermore, what Mr Aberdein later told Mr Salmond turned out in fact to be correct.

4.21. Mr Aberdein contacted Mr Kevin Pringle and Mr [REDACTED] by telephone to inform them [REDACTED] about the complaints and to seek their advice about what he should do. They advised him to tell Mr Salmond. Mr Pringle has confirmed this account of what happened. Mr Hamilton declined to make a statement to me in view of his professional relationship with Mr Salmond. Mr Aberdein then informed Mr Salmond by telephone of what [REDACTED] had told him. In view of this corroboration that Mr Aberdein informed these three individuals of the conversation promptly I believe that Mr Aberdein's account of what was said by [REDACTED] about the existence of complaints is correct.

4.21. So far as concerns the significance of the meetings between [REDACTED] and Mr Aberdein for the question of a breach of the Ministerial Code, if one accepts, as I do, that [REDACTED]

[REDACTED] in fact provide no evidence of any breach of the Ministerial Code

by the First Minister. The meetings do, however, show that there was gossip and rumour about Mr Salmond at that time.

## **5. When did the First Minister become aware that there were allegations against Mr Salmond?**

5.1. The First Minister had been aware of the report on Sky News on 13 November 2017 referred to in paragraph 1 above. The report led to her having a “lingering concern” about Mr Salmond. She describes it in an interview with me in the following terms:

Round about the beginning of November 2017, just to put you in the picture, as you will recall this was at the time the whole world really was talking about the “me too” allegations, and, you know, organisations, governments, parliaments everywhere were trying to make sure they had the right processes in place. And this was around about the time we got a query from Sky News. By “we” I mean the SNP, not the Scottish Government, and that was about allegations that had been made by people at Edinburgh airport about conduct on the part of Alex Salmond.

At that point I spoke to Mr Salmond about it. You know as far as I was aware at that point we were about to see a story appear on Sky News. I spoke to him the morning after we got the press query. He seemed pretty shaken by it at that point and said he had to get to the bottom of what it was. I spoke to him again later that day when he appeared much more bullish. But the following day the Permanent Secretary had indicated to me that he had been, or his lawyers, or a bit of both, I’m not sure, had been contacting people in the Scottish Government effectively asking people that he had worked with or that might have been with him going through Edinburgh Airport to back him up and that that has caused a bit of, some disquiet on the part of those people who had been contacted. And she asked me to ask him to stop that, which I did, and he said he already had all the information he needed. So I suppose the two things that just left me with a lingering concern was the fact that- and I struggle really to go beyond what I’m about to say to you- that his contacting people in the Scottish Government had appeared to almost stir something, a hornet’s nest had been stirred kind of thing. That was the impression I got. And then he said something to me about, you know, you can’t have stories like this running because you get one and the flood gates will open kind of thing, which he immediately qualified and said “oh no, that’s not to say that I think there is anything there”. But it was just the combination of things left me with a “is there something that is about to come forward about Mr Salmond’s behaviour?” It wasn’t something I thought about every day, or worried me everyday, but it was there in the back of my mind, and that I suppose is the back drop to what unfolded at a later stage.

Commented [8]:  
Insert paragraph number.



5.2. Nothing more seems to have been reported about the Edinburgh Airport incident subsequently. As already discussed the First Minister says she first became aware of the fact that complaints against Mr Salmond had been made at the meeting on 2 April discussed below. I am not aware of any evidence which would disprove her account.

## **6. The meeting on 29 March 2018**

6.1. On 29 March 2018 there was a meeting between the First Minister and Geoff Aberdein, former Chief of Staff to Mr Salmond, which took place in the First Minister's office in the Scottish Parliament. [REDACTED]

6.2 The First Minister described in an interview the circumstances in which the meeting was held as follows:-



JH: and then was he brought into your office? Was this just a discussion in the corridor so to speak?

FM: No no, we had been outside, just I don't expect you to visualise my office in Parliament but there is you know outside my office is where civil servants, special advisors work, so the member of staff whose birthday it was, civil servant, incidentally, we were outside there doing the birthday cake, singing happy birthday and Geoff had asked for a word and we went in to my office. Again, just to be clear, that would not have been the first time since Geoff had left as Chief of Staff, after I became First Minister that he had been in the office for something and had stepped in to my room for a chat. We were friends, you know, we are friends. And so he stepped into my room. From memory, I don't think was a particularly long conversation but it took place in my office.

JH: And did he give you any details at that stage about what it was about?

FM: Not, and this is where, so a combination of what I remember about this meeting and then what actually happened at my house on 2 April which we will come on to, make me very firm to the best of my recollection. Remember, this 29 March meeting had never been a significant event in my mind. To the best of my recollection no he did not give me details, it was very much he wanted to get me to agree to see to see Alec. Alec and I were very close but we hadn't been speaking as much as normal, you know I was First Minister, he was off doing other things, he had lost his seat. He wanted me to see Alec and agree to a meeting. He was telling me that he was very worried about Alec, a lot of the discussion was about Alec's state of mind. You know he seemed to be indicating that he had never heard Alec be quite so upset about anything previously, that he was very distressed, that he thought he might be about to resign his SNP membership because of the nature of the issue he was upset about. I do believe that I, partly down to what he was telling me, partly down to the Sky lingering concerns, that it was in the realms of a potential concern or complaint about sexual misconduct. But, you know in my mind, and this was not unusual; Alec and I have worked incredibly closely for a long time, if I was being told he wanted to tell me something, in my mind I would have had to see him and hear what he wanted to tell me. That's basically, I had a general sense that it was something serious, something in the realms of a sexual complaint potentially, and he was very upset about it but I agreed, we didn't set the date of the meeting with Alec at that point, [REDACTED]. But I was very clear, I was agreeing to see Alec as a friend, I was being told he was in a state of considerable distress, but also as the leader of the SNP, I was being led to believe he was on verge of resigning his membership of the party.

6.3. Mr Aberdeen agrees that the initiative for this first meeting came from his making an approach on behalf of Mr Salmond. [REDACTED]

6.4. [REDACTED]

Mr Aberdein attended the Scottish Parliament on 29 March, joining celebrations for the sixtieth birthday of a colleague. The First Minister also briefly joined the party and

they stepped into her office to discuss Mr Aberdein's concerns. During the conversation he again raised an incident which says he had told , though he spent most of the meeting seeking to persuade the First Minister to meet Mr Salmond. She does not believe the discussion took longer than ten minutes, though Mr Aberdein was in parliament for a longer period, socialising with former colleagues. The meeting on 2 April resulted from that short conversation.

6.5. Sometime following a call to Mr Salmond early in March Mr Salmond intimated to Mr Aberdein that he would like to have a meeting with the First Minister in person to set out his concerns about the Scottish Government's handling of the complaints. Mr Aberdein cannot be precisely certain when and how this was arranged but

6.6. Thereafter, he believes he may

6.7. Mr Salmond's account of how the first meeting came about is that he was contacted by phone on or around 9 March 2018 and again the following week by Geoff Aberdein, his former Chief of Staff. The purpose of the contact was to tell him

6.8. Mr Aberdein said that at had informed him that was aware of two complaints concerning Mr Salmond under a new complaints process introduced to include former Ministers. named one of the complainers to him. At that stage

6.9. On receipt of the letter from the Permanent Secretary first informing Mr Salmond of complaints on 7 March 2018 he had secured Levy and McRae as his solicitors and Duncan Hamilton, Advocate and Ronnie Clancy QC as his counsel.



6.10. Mr Salmond and his legal advisers identified what they considered to be a range of serious deficiencies in the Procedure. There was no public or parliamentary record of it ever having been adopted. In addition they believed that it contained many elements of procedural unfairness and substantive illegality. In their opinion there was an obvious and immediate question over the extent to which the Scottish Government even had jurisdiction to consider the complaints. In relation to former Ministers (in contrast to current Ministers) the Procedure offered no opportunity for mediation. The previous complaints procedure with which Mr Salmond had been familiar ('Fairness at Work') was based on the legislative foundation of the Ministerial Code in which the First Minister was the final decision maker. He wished to bring all of these matters to the attention of the First Minister. He did not know at that stage the degree of knowledge and involvement in the policy on the part of [REDACTED] the First Minister [REDACTED]

6.11.

**7. The First Minister's failure to refer to the meeting of 29 March in her statement to the Scottish Parliament on 8 January 2019**

7.1. On 8 January 2019 the First Minister made a statement to the Scottish Parliament concerning the Procedure for Handling Complaints Involving Current or Former Ministers following the conclusion of Mr Salmond's judicial review proceedings which the Scottish Government had withdrawn their opposition to.

7.2. In the course of that statement she disclosed for the first time the series of meetings and telephone calls in which she had held discussions with Mr Salmond as follows:-

In the past, questions have also been raised about meetings that I had with Alex Salmond during the investigation, so I want to address that issue now. I met him on three occasions: on 2 April 2018 at my home in Glasgow; on

7 June 2018 in Aberdeen, ahead of the Scottish National Party conference; and on 14 July 2018, at my home. I also spoke to him on the telephone on 23 April and 18 July 2018. I have not spoken to Alex Salmond since 18 July. On 2 April, he informed me about the complaints against him, which—of course—in line with the procedure, the permanent secretary had not done. He set out his various concerns about the process. In the other contacts, he reiterated his concerns about the process and told me about proposals that he was making to the Scottish Government for mediation and arbitration. However, I was always clear that I had no role in the process. I did not seek to intervene in it at any stage—nor, indeed, did I feel under any pressure to do so.

7.3. The first and most obvious point to note is that this is technically an accurate list by the First Minister of the discussions she actually held with Mr Salmond. What has been suggested, however, is that the omission to refer to the meeting with Mr Aberdeen on 29 March during her statement to the Scottish Parliament created an incomplete and therefore misleading account.

7.4. It is agreed by all concerned in the meeting of 29 March that its purpose was to persuade the First Minister that she should meet Mr Salmond and to make the necessary arrangements if she decided to do so. Clearly Mr Aberdeen was simply a go-between and any information which he could convey was at second hand and would be superseded by whatever Mr Salmond could say at first hand if a meeting took place. The 29 March meeting, according to all participants, took no more than 10 or 15 minutes.

7.5. The First Minister recalls that shortly before the meeting of 29 March

\_\_\_\_\_ and she understood that \_\_\_\_\_ the possibility of allegations emerging against Mr Salmond. This was around the same time a former Scottish Government minister resigned from the SNP over allegations against him, so the matters were topical. She understood that \_\_\_\_\_ Mr Aberdeen asked \_\_\_\_\_ would ask the First Minister to meet with Mr Salmond, as there was a specific matter that he wanted to discuss with her. Mr Aberdeen indicated to \_\_\_\_\_ that Mr Salmond was in a state of distress and considering standing down from the SNP. She was not aware of these contacts in advance. \_\_\_\_\_

Commented [9]:  
Refer to earlier paragraph quoting FM interview.

7.6. According to the First Minister's recollection at the 29 March meeting Mr Aberdeen was primarily seeking to persuade her to meet Mr Salmond.



Her account of the meeting is set out at paragraph [above]. She recalls that the discussion covered the fact that Alex Salmond wanted to see her urgently about a serious matter, and she thinks it did cover the suggestion that that matter might relate to allegations of a sexual nature. [REDACTED]

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Insert reference

[REDACTED]. The impression she had at this time was that Mr Salmond was in a state of considerable distress, and that he might be considering resigning his party membership. However, while she suspected the nature of what he wanted to tell her, it was Alex Salmond himself who told her on 2 April that he was being investigated under the Procedure and also gave the detail of the complaints against him. Mr Aberdeen agrees that the meeting was a very brief one, lasting no longer than fifteen minutes. Mr Aberdeen says that he relayed to the First Minister a broad summary of the complaints as described to him by Mr Salmond. In describing what Mr Salmond had previously told him he refers to him in the course of a telephone call having "relayed to me, in very high level, a summary of the complaints." Whatever is meant by a broad summary it is clear that the information given by Mr Salmond was much more detailed'

Commented [11]:  
[REDACTED]

7.7. The First Minister says due to the nature of the information shared with her at the meeting of 2 April it was that meeting rather than the 29 March meeting with Mr Aberdeen that has always been significant in her mind. She thinks that the assumption in her mind at the time of the 29 March discussion was that any issues of alleged sexual conduct against Mr Salmond would be related to the matter which had been raised by Sky News in the query made to the SNP in early November 2017 which concerned allegations of sexual misconduct on the part of Alex Salmond and are discussed at paragraph [above]. She spoke to Mr Salmond about the allegations at the time. He denied it and, as it happened, Sky did not run a story about it at that time. [Since the identity of the individuals making the allegations was not made known to us and they did not approach the SNP directly, there was no further action that it would have been possible for them to take. However, even though he assured her to the contrary, all of the circumstances surrounding this episode left her with a lingering concern that allegations about Mr Salmond could materialise at some stage.]

Commented [12]:  
[REDACTED]

Commented [13]:  
Insert reference.

Commented [14]:  
Check for repetition with Sky paragraph.

7.8. [REDACTED] recalled a reference [REDACTED] Mr Aberdeen to an incident Mr Salmond had apologised for some time previously. However, this would have meant nothing to the First Minister as she had not been aware of any such incident at the time. That reference, however, later made sense to the First Minister in the light of what Mr Salmond subsequently told her on 2 April.

Commented [15]:  
When?

7.9. Regarding her failure to recall the 29 March meeting when addressing the Scottish Parliament on 8 January 2019 the First Minister says that it is obviously not possible for anyone to be certain of the reasons for forgetting an event. She think the reason this meeting was not engraved in her mind (beyond the fact that it was an unscheduled meeting in the middle of a busy day) are as alluded to in the preceding paragraph. She has expanded upon these comments as follows. Firstly, by the time she met with Mr Aberdein, she already had what she described as a 'lingering concern' that allegations might emerge about Mr Salmond. This was as a result of the Sky media query in November 2017. In other words, the meeting was not the first time possible allegations about Mr Salmond had been raised with her. Had it been, her memory might have been more vivid. But the second, and in her opinion perhaps more relevant factor is that her meeting with Mr Salmond himself a few days later on 2 April was so significant. It was then that he told her the details of the actual complaints against him and his response to them. She thinks it is because this was such a shock to her that the earlier meeting was overwritten in her mind.

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Specify the paragraph.

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Refer to relevant paragraph

7.10. It is regrettable that the First Minister's statement on 8 January 2019 did not include a reference to the meeting with Mr Aberdein on 29 March. In my opinion, however her explanation for why she did not recall this meeting when giving her account to Parliament, while inevitably likely to be greeted with suspicion, even scepticism, is not impossible. What tilts the balance towards accepting the First Minister's account for me is that it is difficult to think of any convincing reason why if she had in fact recalled the meeting she would have deliberately concealed it while disclosing all the conversations she had had with Mr Salmond. Furthermore, given that the meeting was with Mr Aberdein who was in effect acting as an emissary of Mr Salmond it would have been naive to think that the meeting would remain secret given her poor relationship with Mr Salmond at that point.

7.11. Mr Salmond strongly disputes this contention. He argues that:-

In her written submission to the Committee, the First Minister has subsequently admitted to that meeting on 29 March 2018, claiming to have previously 'forgotten' about it. That is, with respect, untenable. The pre-arranged meeting in the Scottish Parliament of 29 March 2018 was "forgotten" about because acknowledging it would have rendered ridiculous the claim made by the First Minister in Parliament that it had been believed that the meeting on 2 April was on SNP Party business (Official Report 8 & 10 January 2019) and thus held at her private residence. In reality all participants in that meeting were fully aware of what the meeting was about



and why it had been arranged. The meeting took place with a shared understanding of the issues for discussion - the complaints made and the Scottish Government procedure which had been launched. The First Minister's claim that it was ever thought to be about anything other than the complaints made against me is wholly false.

The failure to account for the meeting on 29 March 2018 when making a statement to Parliament, and thereafter failing to correct that false representation is a further breach of the Ministerial Code. Further, the repeated representation to the Parliament of the meeting on 2 April 2018 as being a 'party' meeting because it proceeded in ignorance of the complaints is false and manifestly untrue. The meeting on 2 April 2018 was arranged as a direct consequence of the prior meeting about the complaints held in the Scottish Parliament on 29 March 2018.

34. The First Minister additionally informed Parliament (Official Report 10 January 2018) that 'I did not know how the Scottish Government was dealing with the complaint, I did not know how the Scottish Government intended to deal with the complaint and I did not make any effort to find out how the Scottish Government was dealing with the complaint or to intervene in how the Scottish Government was dealing with the complaint.'

I would contrast that position with the factual position at paragraphs 20 and 27 above. The First Minister's position on this is simply untrue. She did initially offer to intervene, in the presence of all those at the First Ministers house on 2 April 2018. Moreover, she did engage in following the process of the complaint and indeed reported the status of that process to me personally.

7.11. It is for the Scottish Parliament to decide whether they were in fact misled. However, in my opinion the failure to disclose this meeting to the Scottish Parliament on 8 January 2019, while resulting in an incomplete narrative of events, probably was the result of a genuine failure of recollection and was not a deliberate omission. That failure did not therefore amount to a breach of the Ministerial Code.

## **8. The meeting of 2 April 2018**

8.1. The following facts concerning the meeting of 2 April are not in dispute: the meeting took place in Ms Sturgeon's home in Edinburgh. The meeting took place at Mr Salmond's request and with the First Minister's agreement. Present in the house were the First Minister, her Chief of Staff,

Ms Lloyd, Mr Salmond, and Mr Aberdein. Mr Duncan Hamilton, a barrister retained on behalf of Mr Salmond was also present; his attendance had not been notified to the First Minister in advance. Mr Peter Murrell, the husband of the First Minister and Chairman of the SNP arrived home while the meeting was still taking place but took no part in it.

8.2. The meeting was in two parts, a discussion between the First Minister and Mr Salmond on their own followed by a meeting at which all five persons were present. The first part of the meeting was in private because Mr Salmond initially asked to see her privately. No permanent civil servant was present at any part of the meeting..

The meeting was a lengthy one; the First Minister estimates between one and two hours; Mr Aberdein describes the first part of the meeting at which only the First Minister and Mr Salmond were present as lengthy.

8.3. The First Minister has stated that at the meeting Mr Salmond told her that complaints against him were being investigated under the Procedure. At that meeting, he showed her a copy of the letter he had received outlining the detail of the complaints. He shared the details of the complaints made against him under the Procedure with her and gave her his response to them.

8.4. Notwithstanding the suspicions she had harboured going into this meeting, the First Minister describes herself as shocked and upset by the reality of what she read. Mr Salmond gave her his reaction to the complaints. In the main he denied them, though in relation to one matter he said that he had previously apologised and considered it out of order for it to be raised again, and said that it was his intention to seek a process of mediation between himself and the complainers. It was also clear, contrary to what the First Minister had anticipated, that he did not intend to resign his party membership or do anything to make the matter public at that stage.

8.5. The First Minister states that as it was clear to her then that these were complaints under the Scottish Government's Procedure, she knew that she had no role in the matter and would not be made aware of it by the Permanent Secretary until any investigation concluded. She states that she was clear to Mr Salmond that she would not intervene.

8.6. The First Minister states that she suspected the reason Alex Salmond wanted to see her on April 2 was that he was facing an allegation of sexual misconduct. The principal reason for this was the “lingering suspicion” she had formed following the alleged incident reported by Sky News on 13 November 2017 and referred to in paragraph 9.1. above. She says that her discussion with Mr Aberdein on 29 March 2018 may have contributed to her suspicion.

8.7. In answer to the question why, if she suspected the nature of what Mr Salmond wanted to speak to her about on 2 April, she nevertheless agreed to the meeting, she states that the reasons were both personal and political. She thought Mr Salmond might be about to resign from the SNP and that, as a result of this or other aspects of how he intended to handle the matter he was dealing with, the party could have been facing a public/media issue that the SNP would require to respond to. As Party Leader, she considered it important that she knew if this was in fact the case in order that she could prepare the party to deal with what would have been a significant issue. As to the personal aspect Mr Salmond has been closer to her than probably any other person outside her family for the previous 30 years, and she was being told he was very upset and wanted to see her personally.

8.8. Although I accept the First Minister’s statement that her motivation for agreeing to the meeting was personal and political, and she may have sought to underscore this by hosting it in her private home with no permanent civil servant present and no expenditure of public money, it would, I think, be difficult to characterise it as a party meeting. Members of political parties do not ordinarily attend party meetings accompanied by their lawyers, and when the First Minister’s husband, who is chairman of the SNP, arrived home, he did not join the meeting. In fairness the First Minister did not seek to make any case to me that this was a party meeting. Nor do I read her statements in the Scottish Parliament on 8 and 10 January 2019 as having made any such assertions contrary to Mr Salmond’s assertions in his submissions to me.

8.9. The First Minister says that she took no action as a result of the meeting. Indeed this appears to be confirmed by Mr Salmond one of whose complaints is precisely that the First Minister failed to take the action he requested. In effect his request was to alter or to override the Government policy and procedure in respect of handling harassment cases which had been agreed in late 2017. It is difficult not to conclude, therefore, that an aspect of the meeting concerned this Government procedure, although of course this was a Government procedure from

which the First Minister was excluded by its express terms as a result of the policy adopted in 2017 and it seems unlikely that she could have foreseen that this request would be made.

8.10. However, in his submission Mr Salmond strongly argues that the First Minister did in fact agree to intervene in the process to secure a mediation process to resolve the complaints. He claims that she gave an assurance to that effect on 2 April. The First Minister, on the other hand, says that she was clear to Mr Salmond that she would not intervene. It is obviously impossible for anyone else to be certain what was said at a meeting where only two parties were present and do not agree what was said. It is always possible that the First Minister did not convey her message as strongly as she thought she did, or that she moderated her response so as to avoid a precipitate breakdown in relations with Mr Salmond. It is also possible that Mr Salmond heard what he wanted to hear. It is certainly the case that at no stage, perhaps even yet, did Mr Salmond appear to understand the difficulties, to say the least, that would have been involved in meeting his demands. All of this, however, is speculation. What we do know is that the First Minister did not in fact accede to Mr Salmond's demands. She did, however, tell the Permanent Secretary at a later stage that in relation to arbitration she (the Permanent Secretary) should "reach whatever decision [she] thought appropriate" (see paragraph 10.8 below). In this respect the First Minister indicated her neutrality on the issue, contrary to Mr Salmond's belief that she expressed her opposition to arbitration. Mr Salmond clearly believes that the First Minister agreed to support arbitration and then went back on that agreement. Even if that were the fact I fail to see how it would raise any issue under the Ministerial Code

## **9. The telephone call of 23 April**

9.1. The First Minister has stated that after the meeting of 2 April it was not her intention to meet with or speak to Mr Salmond about the matter again. Mr Salmond sent her a message on 22 April with a request to speak to her by telephone. When he did so she again thought it possible that he was intending to respond in a way that would make the matter public. She explains that in her opinion it would have been very much in character for him to have made a bold public declaration about the complaints made against him in order to, as he would see it, 'take control of the story'. This could have been along the lines of 'I'm standing down from the SNP while I fight to clear my name' or even a partial *mea culpa* 'I've made mistakes, but I'm not guilty of what I am accused of'. Back then, this is what she



assumed he would eventually do. As Party Leader, she was keen not to be blindsided by such a development, and she explains that is why she agreed to the call.

9.2. The First Minister spoke to Mr Salmond by telephone on 23 April (the substantive call took place early in the evening after a call in the morning had to be aborted due to a poor signal). Her Chief of Staff was in the room with her during this call but not on the line. She thinks the call lasted around 10 to 15 minutes in total. During the call Mr Salmond asked the First Minister to advise the Permanent Secretary that she knew of the investigation and to persuade the Permanent Secretary to accede to Mr Salmond's request for mediation. She says she told him emphatically that she would not do so. Mr Salmond says that he phoned the First Minister by arrangement on WhatsApp to say that a formal offer of mediation was being made via his solicitor to the Permanent Secretary that day.

9.3. Mr Salmond seems during the course of his discussions with the First Minister to have referred to mediation in two distinct contexts. At a later stage he was referring primarily to mediation concerning his legal dispute with the Scottish Government. However, the absence of a provision in the Procedure for mediation between the complainers and a former Minister accused of harassment was also a source of grievance to him. The First Minister states that she was in any event clear that she would not become involved in making representations so from her point of view that distinction does not seem to have assumed any particular importance.

## **10. The decision to inform the Permanent Secretary**

10.1. Mr Salmond sent a further message to the First Minister on 31 May seeking a further meeting. The First Minister states that she initially resisted this request. She still thought it possible that Mr Salmond might 'go public', but the content of their telephone conversation on 23 April and the tenor of his text messages to her on 31 May and 1 June made her think this was unlikely at that stage. Therefore, her intention was to decline this meeting request. The text messages between them show him wishing to provide her with "material" and that she, without outrightly declining to meet, was finding reasons why a meeting was not convenient, which reasons may well have been perfectly genuine. In a text message on 1 June the First Minister writes "I'm not at home at weekend and in Aberdeen on Monday. In any event, I'd prefer a quick chat first to understand the purpose of giving me material. We've already spoken

about why I think me intervening is not right thing to do. Happy to talk on what's app at some point over weekend." Mr Salmond describes this as the opposite of the assurance he says she gave on 2 April.

10.2. On 3 June Mr Salmond sent the following message:-

My recollection of our Monday 2 April meeting was rather different. You wanted to assist but then decided against an intervention to help resolve the position amicably. Now is different. I was intending to give you sight of the petition for JR drafted by senior counsel. You are a lawyer and can judge for yourself the prospects of success which I am advised are excellent. This will follow ANY adverse finding against me by the PS in a process which is unlawful. You are perfectly entitled to intervene if it is brought to your attention that there is a risk of your Government acting unlawfully in a process of which you had no knowledge. Indeed it could be argued that is your obligation under the Scotland Act is to ensure that all government actions are consistent with Convention undertakings

The JR will be rough for me since the hearing will almost certainly be made public but at least I will have the opportunity to clear my name and good prospects of doing so - but for the Government? One further thing to consider. Thus far we have been able to confine evidence offered to the general (and mostly ridiculous) matters. This has had the benefit of keeping everything well clear of current administration. When we go to Court we will have to produce evidence to demonstrate prior process (which incidentally the PS has admitted!).

If you want to discuss privately then I can come to you in the North East on Monday.]

10.3. The First Minister states that the tone and content of this message changed her view of the matter. She explains that the tone of it seemed almost to her intimidatory and the content made clear he was considering legal action. As a result, she decided to inform the Permanent Secretary. The permanent Secretary confirms that she did so on 5 June following up with a letter on 6 June which is set out below.

10.4. The First Minister agreed to meet Mr Salmond and did so on 7 June. There is nothing in the tone of the messages arranging the meeting to indicate her change of opinion, but on the other hand, there was no reason why she would have disclosed this to him in advance of the meeting.

10.5. The First Minister states that her decision to inform the Permanent Secretary was not one she took lightly. Her earlier decision not to inform

the Permanent Secretary of her knowledge, which she says had also not been taken lightly, had been intended to protect the integrity and confidentiality of the process.

10.6. The First Minister decided to make it known to Mr Salmond that she had informed the Permanent Secretary, and make clear again that she would not intervene as he wanted her to. She indicated to the Permanent Secretary in her letter to her that she intended to have such a conversation with him. She states that she felt it important to do this, firstly, because in her opinion Mr Salmond can be persistent and will often interpret conversations or messages in a way that best suit his interests. She wanted to leave no room for misinterpretation. Also, she believed it highly likely that their paths would cross towards the end of that week at the SNP Conference. As it turned out, she thinks he did not attend. She considered that speaking to him in a planned way was better than having him try to 'corner' her in the course of the Conference.

10.7. The text of the First Minister's letter to the Permanent Secretary was as follows:-

Letter from FM to Permanent Secretary

STRICTLY PRIVATE & CONFIDENTIAL

6 June 2018

**For the attention of the Permanent Secretary**

On Monday 2 April I was informed by Alex Salmond that you were investigating a complaint from within the civil service about his conduct while First Minister and that the complaint relates to alleged conduct of a sexual nature.

It was clear, from what he told me, that the complaint was being investigated under the guidance put in place towards the end of last year as part of the Scottish Government's response to the public discussion around sexual harassment cases, and which contained provisions for the handling of any complaints against former Ministers. I recalled and explained that as First Minister I had no role in this process, and that I would be advised of a complaint against a former Minister only when you have concluded your investigation.

The former First Minister (FFM) contacted me again on Monday 23 April to say that he intended to propose mediation.

I told the FFM on both occasions that it would not be appropriate for me to seek to intervene in the process in any way and I did not do so.



After careful consideration, I decided not to inform you of these approaches as I did not want there to be any suggestion that I was seeking to intervene in the process.

However, I have now had a further approach from the FFM and, given its nature and that it represents a potential challenge to the process, I have decided that I should make you aware of it.

The FFM has told me that he considers the process being followed by the Scottish Government to be unlawful, that he has legal advice to the effect that he would be successful in an application for Judicial Review of the process, and that if any finding is made against him, it is his intention to lodge an application for Judicial Review to seek to have the process declared unlawful.

I want to be very clear that my purpose sending this note is not to ask you to cease the investigation or to influence its course in any way – it is to be transparent with you about my knowledge of a potential challenge to the process. You and I have discussed on many occasions the importance of a zero tolerance approach to sexual harassment within the Scottish Government and the importance to building confidence in such an approach of taking such complaints seriously and ensuring proper investigation. I am clear that the seniority, political affiliation or relationship to me or my government of any person subject to a complaint should have no bearing on how it's handled. To that end, you have my support in taking whatever steps you consider necessary and appropriate to investigate any complaint about inappropriate conduct within the Scottish Government.

It remains my view that it would be inappropriate for us to discuss the substance of the investigation prior to its conclusion.

I intend to inform the FFM that I have told you about his approach to me and to advise him again that it would not be appropriate for me to intervene in the process.

Finally, I am also mindful of the public interest considerations that arise when allegations of this nature are made. At this stage, however, it is my view that the interest of ensuring that the conduct of the investigation is fair to all parties and respects the confidentiality of the complainant(s) is the priority.

**NICOLA STURGEON**

10.8. I enquired of the Permanent Secretary, Ms Leslie Evans, concerning her actions and involvement in the matters covered by my remit. Her reply includes the following statements:-

You asked for a statement of my actions and involvement in the matters covered by your remit. In providing such a statement, I should make clear from the outset that, as a civil servant, all my actions – including those taken in relation to this matter – are undertaken on behalf of Ministers and in keeping with the Civil Service Code.

I was not aware at the time – nor have I been made aware since - of any attempt by the First Minister to bring any influence to bear on the Scottish Governments's investigation of complaints against Mr Salmond under the Procedure for Handling Harassment Complaints against Current or Former Ministers. At all times, my engagement with the First Minister was in keeping with the respective roles set out for the First Minister and Permanent Secretary in the Procedure. Accordingly, I did not inform the First Minister that formal complaints had been made about Mr Salmond when they were received in January 2018. In line with the Procedure, I did inform the First Minister of the outcome of the investigation at a meeting on 22 August 2018 in her capacity as both First Minister and as Leader of the Party which the former Minister in question, Mr Salmond, had represented.

As I have set out in my response to your specific questions below, the First Minister wrote to me on 6 June 2018, following a discussion on 5 June 2018, informing me of contact that she had had with Mr Salmond. I replied to the First Minister on 7 June 2018 to acknowledge receipt of her letter and to note the information it contained. In addition, I also wrote to the First Minister towards the end of the investigation on 17 August 2018 to inform her I was seeking legal advice on next steps. In addition to these exchanges, the only other communication I recall with the First Minister on this matter was a telephone call sometime in mid-July in which she told me that she had met with Mr Salmond on 14 July 2018 and that he had raised the issue of arbitration with her. She made it clear to me again that she had no role in this matter and that I must reach whatever decision I thought appropriate. Accordingly, my communication with the First Minister on this issue was very limited during the period in which the investigation was in progress.

In line with the Procedure, Mr Salmond had a number of opportunities to contribute to the investigation. I address this further in my answers to your specific questions below.

The intentions that lay behind my actions at all times throughout this period were the need to follow the process set out in the Scottish Government's Procedure for Handling Harassment Complaints against Current or Former Ministers, in line with the Civil Service values of integrity, honesty, objectivity and impartiality. This was especially true in carrying out the



responsibilities as Deciding Officer assigned to the Permanent Secretary under the Procedure. At no time did I experience any attempt whatsoever by the First Minister – or anyone acting on behalf of the First Minister – to influence how I undertook that role, or the decisions I came to, either in terms of the process followed or the substance of the matter. Indeed, this point is made explicit in the First Minister's letter to me of 6 June 2018: (Here the Permanent Secretary quoted from the First Minister's letter set out above).

## **11. The meeting on 7 June**

11.1. This meeting took place in Aberdeen on 7 June 2018. The First Minister says that her Chief of Staff was aware of the meeting but not present - though she did interrupt to bring it to an end as the First Minister had other matters to attend to. At the meeting on 7 June, the First Minister says she advised Mr Salmond of the action she had taken and made clear again that she was not prepared to intervene in the process. He wanted to give her a document to take away which she believes was a legal opinion he had obtained. She declined to do so. He stated his intention to take legal action if necessary. She expressed it as her opinion that given the seriousness of the complaints against him he should consider addressing the substance of them. Mr Salmond's description of the meeting does not differ in substance from the First Minister's.

11.2. The First Minister later told the Permanent Secretary of this meeting, but says that they did not have any detailed discussion about it.

## **12. The meeting on 14 July and telephone conversation of 18 July**

12.1. Mr Salmond sent the First Minister a further message on 5 July 2018. She did not respond to this message. The message is interesting in explaining Mr Salmond's view of arbitration and how he sought to persuade the First Minister of what he saw as its advantages for the Scottish Government. I quote the relevant part of the message:-

Nicola. I have slept on the content of the latest letter from the PS rejecting arbitration. Two points I want to make to you privately. Firstly, the explanation given in the letter is that arbitration is rejected because the SG is confident in the legality of the process. With respect, that entirely misses

the point. The SG may well believe it is lawful. My Senior Counsel believes it is unlawful. That's the whole point of the arbitration.

The legality will have to be resolved either in private (in a confidential and binding arbitration) or in public at the Court of Session. The SG, and you, have everything to gain from arbitration. If my legal advice is wrong, I will accept that and the current process proceeds. If the SG legal advice is wrong, you discover that without losing in a public court. Adopting an arbitration process also guarantees confidentiality for the complainers, regardless of what happens.

12.2. The next contact between Mr Salmond and the First Minister was on 13 July 2018, as a result of a message sent to Mr Salmond on WhatsApp [REDACTED] saying the First Minister wanted to meet him, which led to their third and final meeting being arranged for 14 July at her home. The First Minister states that by the time of the meeting on 14 July, she was again concerned that the matter might become public. She says that she always thought it possible, even likely, that this was the course Mr Salmond would ultimately take. Were he to take legal action, which she now knew he was considering, this could also put matters into the public domain. She was again anxious - as Party Leader and from the perspective of preparing the SNP for any potential public issue - to know whether his handling of the matter meant it was likely to become public in the near future.

12.3. At that meeting, he told the First Minister he was asking the Scottish Government to agree a process of arbitration. For reason that she did not understand then, and does not understand now, he believed she was blocking this. She told him that was not so as she had no involvement in the complaint process. She says that she suggested again that he should address the substance of the complaints rather than simply focusing on procedure. Although he indicated he would reflect on this, the First Minister believed that he was focused on his request for arbitration and seemed unwilling to accept that she would not put pressure on the Permanent Secretary to accede to it. However, she did tell the Permanent Secretary on 16 July that in relation to arbitration she (the Permanent Secretary) should "reach whatever decision [she] thought appropriate" (see paragraph 10.8 above and Paragraph 12.6 below.) In this respect the First Minister indicated her neutrality on the issue, contrary to Mr Salmond's belief that she expressed her opposition to arbitration.

12.4. Mr Salmond sent the First Minister further messages on 15 and 16 July 2018. The First Minister states that the message of 15 July is Mr

Salmond's interpretation of her saying that she was not involved in the decision. I quote:-

Many thanks for making the time yesterday. I am grateful that you will correct the impression being given that you are against arbitration or that it is somehow against your interests. I know that you need to reflect further on how to progress things beyond that and am not blind to the difficulty of legal advice being suspicious of arbitration. I am genuinely at a loss as to what the downside is for anyone, complainers, SG or me or you. The reasons given to date have been meaningless or more recently just a misrepresentation of your position. If there are good legal reasons then surely they can be set out for you/us. I will wait to hear how you are able to proceed. I am also giving much thought to your advice and thinking deeply about how arbitration on process might open up the space and opportunity to address and resolve the underlying matters, as far as is possible, to everyone's satisfaction.

12.5. By this time, it was clear that the First Minister's relationship with Mr Salmond was breaking down. In her opinion he was clearly upset and angry that she was not assisting him to achieve the outcome he wanted. The First Minister states that she was also upset with him. She says that the nature of the complaints against him and the account he had given her of one of them had badly shaken her faith in him. She states, however, that in spite of that she did not want their relationship to break down completely. He had been her friend and colleague for 30 years.

12.6. The First Minister advised the Permanent Secretary on 16 July of her meeting with Mr Salmond on 14 July and made the Permanent Secretary aware of his belief that she was blocking arbitration. The First Minister made clear to the Permanent Secretary again that she had no view on the matter and the decision was for the Permanent Secretary alone. Given the risk of legal action, she says she did not want any suggestion that an opinion attributed to her, which she had not expressed, was influencing decisions she had no part in. She reiterated to the Permanent Secretary that she must reach whatever decisions she considered appropriate and that she, the First Minister, did not seek to influence her in any way. The First Minister also told her - she thinks it was on the First Minister's return from annual leave - that she had spoken to Mr Salmond on the phone on 18 July, but she says that did not discuss the details of that conversation.

12.7. The First Minister says that it was her wish to avoid her relationship with Mr Salmond from breaking down completely that prompted her

telephone call to him on 18 July. She wanted to draw a line under their contact about the matter. She was also about to take a two day summer break and she did not want it interrupted by contact from him. However, she thinks she was also hoping to make him understand and accept why she could not and would not intervene.

12.8. Mr Salmond's account of this 18 July telephone call is that the First Minister phoned him at 13.05 to say that arbitration had been rejected and suggested that this was on the advice of the Law Officers. She urged him to submit a substantive rebuttal of the specific complaints against him, suggested that the general complaints already answered were of little consequence and would be dismissed, and then assured him that his submission would be judged fairly. She told him he would receive a letter from the Permanent Secretary offering him further time to submit such a rebuttal which duly arrived later that day. Mr Salmond says that as it turned out the rebuttal once submitted was given only cursory examination by the Investigating Officer in the course of a single day and that she had already submitted her final report to the Permanent Secretary. Mr Salmond's view is now that it was believed that his submission of a rebuttal would weaken the case for Judicial Review (his involvement in rebutting the substance of the complaints being seen to cure the procedural unfairness) and that the First Ministers phone call of 18 July 2018 and the Permanent Secretary's letter of the same date suggesting that it was in his "interests" to submit a substantive response was designed to achieve that.

12.9. Later on 18 July, Mr Salmond sent the First Minister a copy of a letter he had received from the Scottish Government. She did not respond to this message. He sent her a further message on 20 July 2018. Again, she did not respond. She has had no contact with Mr Salmond since.

### **13. The Procedure for handling complaints against Ministers and former Ministers and Mr Salmond's objections to it**

13.1. As already mentioned in Chapter 2 above, in December 2017 the Scottish Government adopted the Procedure. Its full and formal title is "Handling of harassment complaints involving current or former ministers" and it is described as an "internal procedure agreed in December 2017 and published in February 2018 on the Scottish Government intranet". Since 23 August 2018 it is also published on the Scottish Government's website at <https://www.gov.scot/publications/handling-of-harassment-complaints-involving-current-or-former-ministers/>. The manner in which the Procedure is intended to operate are set out in Chapter 3 above.

13.2. As pointed out in Chapter 3 the Procedure not only does not envisage the notification of complaints made against former Ministers to the First Minister prior to the completion of the investigation but is designed to preclude her from having any role in the process. The purpose of this provision is clearly to avoid either the reality or the appearance of political interference with the process of an investigation and to ensure the impartiality of investigations. In my opinion this is a legitimate objective of the scheme,

13.3. So far as concerns the limitations on the First Minister's involvement in the Procedure in my opinion the principle of excluding any role for politicians in the resolution of complaints of harassment of public servants is not only a legitimate one but there is a strong case for maintaining it. It is appreciated that Mr Salmond and no doubt others do not share this view. Mr Salmond made a forceful case to the effect that the Minister may intervene in the Procedure in his submission to me which I discuss below at paragraph 13.7.

13.4. [REDACTED] It is not part of my remit to examine how or why that happened or whether

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matters might have been handled differently. I have, however, been asked in the remit “to consider and offer views on whether the Ministerial Code might need revision to reflect the terms of the Procedure and the strict limitations it places on the involvement of the First Minister in cases which fall to be considered under the Procedure.” I am not asked in my remit to comment on whether the Procedure itself may require revision in the light of experience and it is not part of the function of the independent advisers on the Ministerial Code.

13.5. It is of course important to learn what lessons there are from the experience gained in dealing with the complaint against Mr Salmond. In his judicial review proceedings he raised a substantial number of complaints about the procedures applied in his case. In his submission to me he has repeated his view that there are serious deficiencies in the Procedure and has identified a number of them, including the absence of a mediation procedure in the case of complaints against former Ministers as well as the more fundamental question of how a non-statutory and non-contractual scheme could bind a former Minister. It seems to me that at least some of Mr Salmond's arguments here raise issues which require an answer. However, a report on the question whether there have been breaches of the Ministerial Code is not the place to provide that answer.

[REDACTED] It will be necessary, therefore, to examine each and every one of these issues with a view to deciding what, if any, amendments to the Procedure may be required in the light of this experience. In particular in my opinion the question of whether a relatively informal resolution procedure is appropriate at all and offers proper guarantees for the rights of all parties where the facts alleged in a complaint may also, if proved, amount to serious criminal conduct, is a matter which should receive further consideration.

13.6. I understand such a process of review is underway in the form of... This is a more appropriate forum in which to deal with these questions. Ultimately the question of whether there are legal deficiencies in the Procedure which need to be addressed is one for the Scottish Law Officers.

13.7. Mr Salmond in his submission to me, having expressed his concern about the terms of the remit of this enquiry, among other matters stated the following:

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Insert appropriate reference to the expert review which is looking at this question..

4. ...The reason for my concern is that the remit drawn up for Mr Hamilton focuses on whether the First Minister intervened in a civil service process. As I have pointed out to Mr Hamilton, I know of no provisions in the Ministerial Code which makes it improper for a First Minister to so intervene.

5. To the contrary, intervention by the First Minister in an apparently unlawful process (subsequently confirmed by the Court of Session) would not constitute a breach precisely because the First Minister is under a duty in clause 2.30 of the Ministerial Code to avoid such illegality on the part of the Government she leads.

6. Further, to suggest intervention was a breach would be to ignore and contradict the express reliance of the procedure on the position of the First Minister as the leader of the party to which the former minister was a member in order to administer some unspecified sanction.

13.8. It is certainly correct that there is nothing in the Ministerial Code which expressly prevents the First Minister from involving herself in any process of government. However, the procedures to be followed in an internal Scottish Government enquiry into allegations of harassment were set out in the Procedure which had been adopted and agreed by the Scottish Government including the First Minister as recently as fourteen months previously. While that Procedure had not been enacted into law and it might therefore be argued that the Scottish Government could have revoked or overridden it, it could hardly be argued that the First Minister would have had any power unilaterally to do so. The Ministerial Code lays a major emphasis on the principle of collective cabinet responsibility which is as binding on the First Minister as on her ministerial colleagues.

13.9. Even had such a unilateral move by her been possible it would undoubtedly have been seen as a partisan and political interference in a process which was then underway, and as an interference of a nature which the Procedure was expressly designed to prevent. What is more the complainants had undoubtedly acted in the expectation that their complaints would be dealt with in accordance with the terms of the Procedure. What answer could have been made if these complainants in their turn had sought a judicial review of an attempt to overturn a process which was already underway? Such a U-turn would certainly have been both legally and politically impossible even had the First Minister wished to make it, which clearly she did not. One can only imagine the political reaction had the First Minister attempted to override a system expressly designed to deal with harassment complaints against former Ministers on the first occasion when it was used for this purpose. To have adopted a harassment Procedure after extensive consultation, and then to have altered it following a confidential mediation at a time when significant

complaints against a former First Minister were actually under investigation would undoubtedly have undermined public confidence in the processes of government to a much greater extent than in fact eventually happened as a result of Mr Salmond's successful judicial review.

13.10. Furthermore, to suggest that the First Minister not only could but should have intervened unilaterally to protect legality is to ignore the role of the Law Officers both under the Scotland Act and in the terms of the Ministerial Code. Paragraph 2.30 of the Code, having stated the overarching duty on Ministers to comply with the law goes on to state that it is part of the role of the Law Officers to ensure that the Government acts lawfully at all times.

13.11. It might be argued that a distinction can be drawn between an involvement in the Procedure to override the Permanent Secretary's decision as distinct from a possible involvement to insist on settling the litigation intended and subsequently brought by Mr Salmond by agreeing to his demands for mediation. In my opinion such a distinction would be wholly artificial. The First Minister acted in accordance with the spirit as well as the letter of the Procedure in declining to involve herself in questions concerning Mr Salmond's intended or actual litigation. The Procedure was one which the legal advisers to Scottish Government had been involved in drawing up. The services of the Scottish Law Officers, who under the Scotland Act 1998 are responsible for the provision of legal advice to Scottish Government, were at all times available to the First Minister and Scottish Government when the Procedure was being devised and to the Permanent Secretary when Mr Salmond's judicial review was being defended. Even on the assumption that the Law Officers got it wrong it does not follow that the First Minister was in breach of the Ministerial Code in failing to take Mr Salmond's advice.

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Check when litigation brought.

13.12. I do not, therefore, accept that the First Minister's decision to follow the terms of the Procedure and not to seek to avoid or amend it during the course of an ongoing investigation amounted to a breach of the Ministerial Code. In my opinion for the reasons stated in the preceding paragraphs Mr Salmond's submissions in this regard are misconceived.

#### **14. The Ministerial Code: Contacts with External Individuals and Organisations, including Outside Interest Groups and Lobbyists**

15.1. Sections 4.22 and 4.23 of the Ministerial Code provide as follows:-

4.22 Ministers meet many people and organisations and consider a wide range of views as part of the formulation of Government policy. Meetings on official business should normally be arranged through Private Offices. A private secretary or official should be present for all discussions relating to Government business. Private Offices should arrange for the basic facts of formal meetings between Ministers and outside interest groups to be recorded, setting out the reasons for the meeting, the names of those attending and the interests represented. A monthly list of engagements carried out by all Ministers is published three months in arrears.

4.23 If Ministers meet external organisations or individuals and find themselves discussing official business without an official present – for example at a party conference, social occasion or on holiday – any significant content (such as substantive issues relating to Government decisions or contracts) should be passed back to their Private Offices as soon as possible after the event, who should arrange for the basic facts of such meetings to be recorded in accordance with paragraph 4.22 above.

14.2. It seems to have been generally assumed, even in the terms of the remit itself, that section 4.22 of the Ministerial Code applied to the meetings between the First Minister and Mr Salmond. I begin by saying that I do not accept that these meetings can be considered as SNP party meetings for the reasons stated in paragraph 9.8 of this report in which I discuss the character of the meeting of 2 April. The First Minister has accepted that before that first meeting with Mr Salmond she suspected the reason Alex Salmond wanted to see her on April 2 was that he was facing an allegation of sexual misconduct. As already explained I accept her statement that her motives for agreeing to the meeting were partly political and partly personal.

14.3. From the first sentence of paragraph 4.22 of the Code it is clear that the primary, and possibly the sole purpose of this provision is to deal with meetings with people and organisations which are held or can be considered “as part of the formulation of Government policy.” This is reinforced by the subsequent requirement in the paragraph “for the basic facts of formal meetings between Ministers and outside interest groups to be recorded, setting out the reasons for the meeting, the names of those attending and the interests represented.” Paragraph 4.23 then extends the provision to deal with the situation where informal meetings or



discussions take place but again this is qualified by confining it to discussions containing “any significant content (such as substantive issues relating to Government decisions or contracts)”. Ministers must have numerous contacts every day which are not required to be recorded under this provision. The other highly significant aspect of this provision is that it applies only to “contacts with *external* individuals and organisations, including *outside* interest groups and lobbyists.” (Emphasis added).

14.4. We know what the discussions were about. They concerned a governmental process for dealing with harassment complaints against Scottish Government Ministers, former Ministers and officials generally known as “the Procedure”. As already stated its full and formal title is “Handling of harassment complaints involving current or former ministers” and it is described as an “internal procedure agreed in December 2017 and published in February 2018 on the Scottish Government intranet”. Since 23 August 2018 it is also published on the Scottish Government’s website at <https://www.gov.scot/publications/handling-of-harassment-complaints-involving-current-or-former-ministers/>.

14.5. Note that the procedure is clearly described as an internal procedure. It did not apply to anybody who did not and never had worked for Scottish Government. Indeed it was precisely the claim made by Scottish Government to have jurisdiction over harassment carried out by former Ministers during their time in office which formed a major bone of contention between Mr Salmond and the Scottish Government. In my opinion any person who was being proceeded against under the Procedure, or for that matter was making a complaint under its provisions, was entitled to raise an issue without the matter being recorded under these provisions of the Code. I fully accept the logic of the First Minister’s position that it would have been impossible to record such meetings or discussions without a risk of prejudicing the proceedings or interfering with their confidentiality.

14.6. In my opinion, therefore, neither the letter nor the spirit of paragraphs 4.22 and 4.23 of the Ministerial Code applied to the discussions between the First Minister and Mr Salmond. Consequently I do not consider that the First Minister acted in breach of the Code in not disclosing them prior to 5 June.

## **15. The alleged leak to the Daily Record**

15.1. Mr Salmond has asked for an investigation into whether an alleged criminal leak of part of the contents of the Permanent Secretary's Decision report to the Daily Record was sourced from the First Minister's Office.

15.2. It is no part of my function and I have no power to investigate criminal offences. If Mr Salmond has evidence it is a matter for the police.

## **16. Conclusions**



**From:** [REDACTED] <[REDACTED]@gov.scot>

**Sent:** 25 February 2021 17:15

**To:** First Minister <firstminister@gov.scot>

**Cc:** Henderson G (Gavin) <Gavin.Henderson@gov.scot>; News Desk <Newsdesk@gov.scot>; Veitch J (Jennifer) <Jennifer.Veitch@gov.scot>; [REDACTED] <[REDACTED]@gov.scot>; Nicolson S (Stuart) Special Adviser <Stuart.Nicolson@gov.scot>; McAllister C (Colin) <Colin.McAllister@gov.scot>; Ingebrigtsen R (Ross) <Ross.Ingebrigtsen@gov.scot>; Grant J (Julie) <Julie.Grant@gov.scot>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]@gov.scot>; Director of Communications, Ministerial Support & Workplace <directorcmsw@gov.scot>; Rennick NS (Neil) <Neil.Rennick@gov.scot>; [REDACTED] <[REDACTED]@gov.scot>; Bruce A (Andrew) <Andrew.Bruce@gov.scot>; Rogers D (David) (Constitution and Cabinet Director) <David.Rogers@gov.scot>; Hynd JS (James) <James.Hynd@gov.scot>; Permanent Secretary <PermanentSecretary@gov.scot>; [REDACTED] <[REDACTED]@gov.scot>; [REDACTED] <[REDACTED]@gov.scot>; First Minister Covid Briefing Unit <FMcovidbriefingunit@gov.scot>; Lloyd E (Elizabeth) <Elizabeth.Lloyd@gov.scot>; Deputy First Minister and Cabinet Secretary for Education and Skills <DFMCSE@gov.scot>

**Subject:** Complaint of breach of the Ministerial Code by the First Minister - Daily Mail query

PS First Minister

The Daily Mail, Telegraph, Sun, Scotsman and Herald are looking for a response to the attached letter from [REDACTED] asking for an investigation into whether the FM breached the Ministerial code during yesterday's press briefing by responding to questions about the former FM and the Harassment Inquiry.

It states:

*In her daily press briefings on the pandemic, the First Minister has consistently refused to answer questions on issues other than Covid-19. Yesterday, however, instead of refusing to respond to questions on matters irrelevant to the purpose of the press briefing on Covid-19, she deliberately chose to do so. Not once, but five times.*

I have agreed the lines below with policy and SPADs. Is the First Minister content for them to issue?

A Scottish Government spokesperson said:

"A letter has been received from [REDACTED] and will now be considered."

Many thanks

[REDACTED]

[REDACTED] | Head of Major Events Planning and Health Newsdesk Manager | Scottish  
Government Communications | [REDACTED] | [REDACTED] |  
[REDACTED]@gov.scot | <http://www.gov.scot>



25<sup>th</sup>. February 2021

Ms. Leslie Evans  
Permanent Secretary  
Scottish Government  
St. Andrew's House  
Edinburgh EH1

Dear Ms. Evens,

FIRST MINISTER IN BREACH OF THE MINISTERIAL CODE ON 24<sup>TH</sup> FEBRUARY 2021

I wish to lodge a complaint of breaches of the Ministerial Code by the First Minister on Wednesday 24<sup>th</sup>. February, 2021. The substance of the complaint, and the facts it is based upon, are set out below.

As the complaint could be seen as being in the context of matters being examined by the Parliamentary Committee of Inquiry, to which you have given evidence, you may think it inappropriate for you to be the official dealing with this complaint. If that is so, then I request that the next person in seniority should take this as addressed to them. I would like to be informed of who will deal with this complaint, should it not be you.

In her daily press briefings on the pandemic, the First Minister has consistently refused to answer questions on issues other than Covid-19. Yesterday, however, instead of refusing to respond to questions on matters irrelevant to the purpose of the press briefing on Covid-19, she deliberately chose to do so. Not once, but five times. It can be seen here:

<https://www.bbc.co.uk/iplayer/episode/m000spr6/coronavirus-briefing-reaction-24022021>.

You will note “coronavirus briefing.” The national broadcaster was in no doubt of the purpose of First Minister’s appearance. These briefings have all along had only one purpose. The timings show her response to questions which were asked as the briefing continued. I have had them double-checked as to times:

30.20 Question from [REDACTED] (SKY News)

First Minister spoke for 48 seconds on what can fairly be described as the Salmond issue.

32.57 Question from [REDACTED] (ITV)

First Minister spoke for 5m 16secs on Salmond issue

52m 49scs Question from [REDACTED] (Daily Telegraph)  
First Minister spoke for 1m 36scs on Salmond issue

1h. Question from [REDACTED] (Daily Mail)  
First Minister spoke for 52 seconds on Salmond issue

1h 02m "Question from [REDACTED] (Daily Express)  
First Minister spoke for 59 seconds on Salmond issue.

In total, she spent over 9 minutes of a meeting called to inform the public, through the media, including BBC television, of the government's continuing action on the pandemic crisis, not to express her views on clearly separate matters arising from the Parliamentary Inquiry.

Of course, the First Minister was not to know that the first question from [REDACTED] was not about Covid-19 and government policy in dealing with. But she did not, as on previous occasions, refuse to answer and re-state the purpose the briefing was convened for. Nor did she do that when the second question came from Peter Smith, and the others. The only conclusion that can be drawn from her action from 30.20 on, points to it being no accident; a deliberate choice.

When I state "the Salmond issue" above I mean what can be seen from the BBC iplayer – a sustained attack on Mr. Salmond on matters relevant to the Parliamentary Inquiry, but not remotely connected to a Covid briefing.

The complaint is, therefore, based on the attacks on Mr. Salmond in a forum that had been arranged by the Scottish Government to inform the public on a subject, the pandemic, a matter of serious public concern, in which maximum publicity would be given to the words of the First Minister. It is a gross breach of her duty to use that Government sponsored forum, for a public attack on Mr. Salmond in matters not related to the purpose of a briefing to which the media had been invited.

I submit that it is a breach of the Ministerial Code to allow, and then use, a public health Covid briefing to launch an attack on Mr. Salmond in the context of matters arising from the Parliamentary Inquiry. By her conduct as recorded by the BBC, she is in flagrant breach of the Clause 1 of the Code, and Clause 10 governing the conduct of Ministers and the Presentation of Policy.

It is not for me to question a decision by the First Minister to make a public attack on Mr. Salmond. But if she wished to do so, then she could have arranged a press conference on the subject, which would have been the proper and legitimate forum in which to do so. Abusing the Government Covid briefing was neither proper or legitimate. That is where the Code has been breached.

However, there are additional breaches of the Code which are quite extraordinary, unique in their gravity, and a matter of deep concern for all who understand the implications of what the First Minister said in those 9 minutes.

During her attacks on Mr. Salmond she said:

“The behaviour complained of was found by a jury not to constitute criminal conduct and Alex Salmond is innocent of criminality, but that doesn’t mean that the behaviour they complained of didn’t happen and I think it’s important that we don’t lose sight of that”

Unlike the First Minister, who did not attend Mr Salmond’s trial, the jury was there for every second. They saw Mr. Salmond, cross examined, precisely denying that the alleged behaviour happened. The jury saw and heard prosecution witnesses under cross examination. The jury’s conclusion, with a majority of women on it, was to acquit Mr. Salmond. If as the First Minister states the jury’s verdict means that the complaints they had before them in evidence did in fact happen, then the only logical conclusion you can draw from her words is that the jury was wrong in its verdict – 13 times.

Those were weasel words employed by the First Minister, and any reasonable person would draw more than an inference from them that the jury was wrong. The First Clause of the Ministerial Code (1.1) states that “Scottish Ministers are expected to maintain high standards of behaviour and to behave in a way that upholds the highest standards of propriety.” The First Minister’s comment on the trial verdict, breached those standards.

I have been in public life for over 60 years, and in the course of it studied how heads of state and governments in the democracies have behaved in office. I cannot recall one single incident when the head of a government so egregiously questioned the verdict of a jury, or even thought it a proper and legitimate discharge of their duty to do so.

It is vital to the health of a democracy that Government more than any other part of our society maintain a scrupulous distance between it and intervention, even post-trial intervention, in our criminal justice system. That is the standard reflected in Clause (1.1) of the Code. Clause 1.3 states, inter alia, that Ministers “should uphold the administration of justice.” The First Minister, knowingly, breached those parts of the Code with her comments on the trial.

I submit that there is overwhelming evidence that on several counts the First Minister has engaged, deliberately, in grave breaches of the Ministerial Code.







## Re: FW: ODO - Scottish First Minister Breaches of Ministerial Code: Knowingly Misleading Parliament: Investigation of Deaths - [REDACTED]

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**From:** James Hamilton <[REDACTED]@[REDACTED]>  
**To:** [REDACTED] <[REDACTED]@gov.scot>  
**Date:** Tue, 16 Feb 2021 13:15:32 +0000

[REDACTED]

I agree with your suggested approach. While there is some logic in some of what he says I would be wary of being drawn into discussion which I suspect could become very protracted. If he presses you I would simply say that he is raising issues that go far beyond my remit.

James

On Tue, 16 Feb 2021 at 11:02, <[REDACTED].[REDACTED]@gov.scot> wrote:

Hi James,

This is a bit of an odd one- SG have forwarded this email which was sent to the Central Enquiries mailbox.

The correspondent wants to make you aware of a number of issues where they feel the FM has breached the ministerial code, but these appear to be outwith the remit of the current investigation.

The correspondent seems to just want an acknowledgement that you have received the email, so I can draft a very short response that acknowledges receipt and that it has been passed to you.

Best wishes,

[REDACTED]

---

**From:** [REDACTED]  
**Sent:** 10 February 2021 16:28  
**To:** Central Enquiry Unit <[CEU@gov.scot](mailto:CEU@gov.scot)>  
**Cc:** [ruth.davidson.msp@parliament.scot](mailto:ruth.davidson.msp@parliament.scot); [oliver.mundell.msp@parliament.scot](mailto:oliver.mundell.msp@parliament.scot);  
[jackie.baillie.msp@parliament.scot](mailto:jackie.baillie.msp@parliament.scot); [Patrick.Harvie.msp@scottish.parliament.uk](mailto:Patrick.Harvie.msp@scottish.parliament.uk);  
[alison.johnstone.msp@parliament.scot](mailto:alison.johnstone.msp@parliament.scot); [alex.cole-hamilton.msp@parliament.scot](mailto:alex.cole-hamilton.msp@parliament.scot);  
[Willie.Rennie.msp@scottish.parliament.uk](mailto:Willie.Rennie.msp@scottish.parliament.uk); [editor@holyrood.com](mailto:editor@holyrood.com);  
[Adam.Tomkins.msp@parliament.scot](mailto:Adam.Tomkins.msp@parliament.scot); [anas.sarwar.msp@parliament.scot](mailto:anas.sarwar.msp@parliament.scot);

[monica.lennon.msp@parliament.scot](mailto:monica.lennon.msp@parliament.scot); [REDACTED]

**Subject:** Scottish First Minister Breaches of Ministerial Code: Knowingly Misleading  
Parliament: Investigation of Deaths

FAO James Hamilton QC, Independent Adviser on the Scottish Ministerial Code



Dear Mr Hamilton

We note from FOI (FOI/202000108998, 6 Nov 2020) that you are dealing with the First Minister Rt Hon Nicola Sturgeon MSP and relevant breaches of the Scottish Ministerial Code.

**In terms of scale of the breach of the code, we have raised a much more serious breach of the code. This with what should be the incontrovertible proof of a very clear Holyrood FMQ recording on a fundamental matter of government.** It has the SFM giving opposite statements in one sentence. One would of necessity be an untruth. And clearly misleading both parliament and the public, and repeated the misleading in the FMQ. We drew it to the attention of the Presiding Officers but nothing happened. They had no answer, nor could there be.

**The issue is that the SFM was seeking to hide that we do not have a lawful independent system of investigating deaths.** Instead there is the unlawful Scottish system that is run by the Scottish Government. The situation is similar on prosecutions, the prosecution system is run by the government. There is no equivalent of your former role of a DPP. The heads of the systems of prosecutions and the investigation of deaths are two government ministers! Here the judiciary is almost wholly dependent on the government of the day, it cannot be considered to be independent. Scotland's most senior judges the Court of Session 'agree'. They well-knew the problem and raised it in their submission to the Calman Commission 2008/09. Calman said that it was 'not my job'; this when his brief said that it was (Scotland Act 1998 and the constitution). So the judges continued on their unlawful government-dependent way. For over twenty-years the Scottish judiciary have knowingly operated an unlawful justice system. We have done a quick summary report, 'The Absence of a Lawful Judiciary and Lawful Justice System in Scotland'. What we are now seeing, week-on-week, is the predicted collapse of the Scottish justice system. The Salmond case and now the Rangers FC case, are just the most visible demonstration so far. We counted over 30 ways that the Scottish justice system could fall, this when one would be considered to be excessive.

As HM Inspector (8 titles) I have regulated all GB/UK sectors, including government, judiciary, courts, and police forces; constantly enforcing the law. I acted as a Crown Prosecutor. I also advised and sat with HM Coroners on deaths that I had investigated. I introduced the application of the GB/UK-wide law to infection control, the main legislation that applies to coronavirus (HSWA 1974, COSHH). Nicola Sturgeon and other senior ministers repeatedly refused to implement this law. The law is almost completely absent. This FM's policy will have cost in the region of 20,000 reasonably preventable premature deaths in Scotland over the last ten years, and on-going. The Scottish care homes deaths on current data were particularly bad. Sending known infected patients into care homes was serving a death sentence on many people in Scotland. It was not only 'wrong', it was extreme unlawfulness by the Scottish



Government. ASAP-NHS repeatedly warned the FM on infections and the law but they ignored it. Healthcare and social care are devolved but the reserved law on all public safety still applies, that is demonstrated in rare government prosecutions (GB's HSWA 1974).

Relevant to the Salmond case (legally it madly reduced to the current FM prosecuting the former FM, and losing), we are also dealing with 'Scottish Policing Unlawful'. This is linked to the government's unlawful investigation into the Scottish care homes COVID-19 disaster involving the hundreds of preventable deaths. Back to where we started, there is no independent system of investigating deaths in Scotland. This weekend it is going back in reply to the Chief Constable and the First Minister. Here is the opening:

**Policing in Scotland became unlawful on 1 July 1999. This was when the Scotland Act 1998 (ultra vires) unlawfully handed over the control of police investigations to the Scottish Government. This was in the form of two Scottish Ministers (the Lord Advocate, and the Solicitor General), a ministerial-led government department (The Crown Office, COPFS), staffed by government officers. All under the Scottish First Minister. Breach ECHR and the Human Rights Act 1998 Article 6, and much other law.**

**On the same day, similarly the previously lawful independent systems of prosecutions and the investigation of deaths also passed into the control of the Scottish Government. The lawful independent judiciary became almost entirely dependent on the Scottish Government of the day, and thereby became unlawful. At a stroke, Scotland failed two of the four tests of being a democracy (rule of law, human rights). Remarkably, from the 1 July 1999, Scotland de facto ceased to be in any form a functioning democracy.**

Please can you personally confirm that this has through to you?

As you can imagine there is vast amount behind this. The 'justice' system is legal insanity. With the absence of a lawful justice system in Scotland, the matters have had to be referred to the UK Supreme Court. It should be for them to make representation to the UK Government to address the unlawfulness of the Scotland Act 1998. This is for the Leader of the House and the Cabinet Office. There has been engagement from two previous CO Cabinet Secretaries on related matters.

Many thanks for your time

[REDACTED] on behalf of ASAP-NHS  
[REDACTED]

----- Forwarded Message -----

**Subject:** Scottish First Minister Knowingly Misleading Parliament: Investigation of Deaths

**Date:** Mon, 3 Feb 2020 11:55:44 +0000

**From:** [REDACTED]

**To:** [presidingofficers@parliament.scot](mailto:presidingofficers@parliament.scot)

**CC:** [jackson.carlaw.msp@parliament.uk](mailto:jackson.carlaw.msp@parliament.uk), [richard.leonard.msp@parliament.scot](mailto:richard.leonard.msp@parliament.scot), [patrick.harvie@scottishgreens.org.uk](mailto:patrick.harvie@scottishgreens.org.uk), [willie.rennie.msp@scottish.parliament.uk](mailto:willie.rennie.msp@scottish.parliament.uk), monica Lennon <[Monica.Lennon.msp@parliament.scot](mailto:Monica.Lennon.msp@parliament.scot)>, [Anas.Sarwar.msp@parliament.scot](mailto:Anas.Sarwar.msp@parliament.scot),

[justice.committee@scottish.parliament.uk](mailto:justice.committee@scottish.parliament.uk), [publiccorrespondence@cabinetoffice.gov.uk](mailto:publiccorrespondence@cabinetoffice.gov.uk),  
[enquiries@scotlandoffice.gsi.gov.uk](mailto:enquiries@scotlandoffice.gsi.gov.uk), [enquiries@advocategeneral.gsi.gov.uk](mailto:enquiries@advocategeneral.gsi.gov.uk),  
[tony.lloyd.mp@parliament.uk](mailto:tony.lloyd.mp@parliament.uk), Pattullo D (Douglas) <[Douglas.Pattullo@parliament.scot](mailto:Douglas.Pattullo@parliament.scot)>,  
[REDACTED]@bbc.co.uk, [REDACTED]@heraldandtimes.co.uk>,  
[REDACTED]@heraldandtimes.co.uk, [REDACTED]@thetimes.co.uk, [REDACTED]  
[REDACTED]@thetimes.co.uk>, [REDACTED]@dailyrecord.co.uk>, [REDACTED]  
[REDACTED]@sundaypost.com>, [REDACTED]@bbc.co.uk, [stv.news@stv.tv](mailto:stv.news@stv.tv),  
[news@channel4.com](mailto:news@channel4.com), [newsdesk@sundaytimes.co.uk](mailto:newsdesk@sundaytimes.co.uk), [REDACTED]@jpimedia.co.uk,  
[REDACTED]@jpimedia.co.uk, [news@thecourier.co.uk](mailto:news@thecourier.co.uk), [news@sundaypost.com](mailto:news@sundaypost.com),  
[REDACTED]@independent.co.uk, [REDACTED]@theguardian.com, [editor@holyrood.com](mailto:editor@holyrood.com),  
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[pj.newsdesk@ajl.co.uk](mailto:pj.newsdesk@ajl.co.uk)

Rt Hon Ken Macintosh, MSP Presiding Officer, Scottish Parliament

Dear Mr Macintosh

On the 16th January 2020 at First Ministers Questions, the recording shows that the First Minister Rt Hon Nicola Sturgeon knowingly misled Parliament on an extremely serious matter. The misleading needs no opinion, the misleading is guaranteed, objective, and anyone can check it on the recording and the records. At the time the FM proved the misleading themselves. It needed no additional evidence. The misleading should have been obvious to anyone involved in government in Scotland. However so far it does not seem to have been picked up. It relates to the failure to investigate suspicious deaths in Scotland or it having a lawful system to do so.

The FM stated very clearly on two separate occasions in relation to Fatal Accident Inquiries (FAIs) that **'The Law Officers decide on FAIs, the Government does not decide on FAIs'**. **The FM knows that the Law Officers are the Scottish Government** (section 44 Scotland Act 1998). The FM knows that the Law Officers are in their government.

**The FM said it in relation to the death of the ten-year old Milly Main at the Queen Elizabeth University Hospital.** Anas Sarwar MSP was following up on her family requesting that the Lord Advocate carry out a Fatal Accident Inquiry into her death including relating to failures in infection control measures.

The misstatement by the FM was not a slip of the tongue. It was repeated in the same FMQ in relation to the **death of Craig McClelland**, this is in response to FMQ from Richard Leonard MSP.

If the FM wants to say that the decisions on FAIs are made independent of government, then who does decide? The Law Officers are the Lord Advocate and the Solicitor General and they are always Scottish Ministers and the government. They do not even make their decisions independently. They act on investigations and advice from their ministerial-led government department, COPFS –the Crown Office and Procurator Fiscal Service. The law officers are part of the Scottish Government led by the FM, everyone involved is the government. There is absolutely no-one involved in the FAI decisions who is independent of government.

**Of course the ministerial code applies, section 1.3 part c. Because the FM knows that the law officers are in her government, the second part also applies.** <https://www.gov.scot/publications/scottish-ministerial-code-2018-edition/>

The matter covered by the misstatement is exceptionally serious. It relates to a very large number of deaths. It seeks to hide that we in Scotland do not have an independent or lawful system of investigating deaths: unlawfully the government controls the judicial process. We even have the infamous quote from the current Lord Advocate as head of the system of



investigations and prosecutions 'My loyalty is to my government' The Times (Scotland) April 1<sup>st</sup> 2017.

The SFM, and her legal advisers the Lord Advocate and the Solicitor General know full-well that no legitimate government can run the system of investigating deaths. Across all of the UK and all 47 countries of Europe, the Scottish Government's system ranks as extremely unlawful, and inevitably corrupt.

Following the FM's 'misstatement' the ministers involved do not seem to have addressed the untruth. The Lord Advocate the Rt Hon James Wolffe QC, and the Solicitor General Alison Di Rollo QC seem content for the misleading to stand. So too are the other ministers involved in the two deaths, these are the Justice Minister Humza Yousaf and the Health Minister Jeane Freeman OBE. Similarly the rest of the Cabinet seem to have done nothing despite their collective responsibility.

All MSPs know what constitutes the Scottish Government. They all know that it is the FM, the Law Officers (who are also Scottish Ministers), and the other Ministers. By giving the Parliament false assurance on the system of investigating deaths and obstructing its questioning and purpose, it seems that the FM could also fall foul of 'contempt of Parliament'.

The SFM would appear to be repeating the Profumo error of not telling the truth to Parliament. The government does decide on the investigation of deaths. In this case the consequences of the minister's misleading is vastly greater. The FM is in effect covering-up that Scotland does not have an independent or lawful system of investigating deaths. The cover-up permits a very large number of preventable premature deaths in the FM's NHS Scotland. No-one has been lawfully and competently investigating the healthcare deaths but it will be thousands of preventable deaths over the last ten years. If the minister, or ministers, cannot be relied on to tell the truth, then the Scottish Parliament is holed below the waterline.

**It should be relied on that the Scottish Parliament upholds the law, the constitution, and its codes of conduct. Holyrood would be failing in a basic test of being a functioning parliament if it did not do so.**

It would be extremely damaging to Holyrood and to Scotland's reputation if the Parliament fails to uphold the law on the investigation of deaths, and on the Ministerial Code. It would then require others with the legal power to ensure that the reserved law on public safety and ECHR were upheld and so protect the people of Scotland and secure justice.

Yours sincerely

[REDACTED]

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**From:** James Hamilton [REDACTED]  
**Sent:** 16 February 2021 13:03  
**To:** [REDACTED]@gov.scot>  
**Subject:** Re: FW: [EXTERNAL] RE: FAO James Hamilton

Hi [REDACTED]

Yes. To be honest his evidence does not add anything more to the contemporaneous accounts of Messrs Pringle and Salmond that Aberdeen told them at the time.

I have no problem with you giving the same information about timing as was given to others.

James

On Tue, 16 Feb 2021 at 10:56, <[REDACTED]@gov.scot> wrote:  
Hi James,

David Clegg has been in touch asking whether you need anything more from him- would it be ok to go back to him, perhaps later in the week, and confirm you have no more questions for him.

His out of office says he is on leave until 1 March anyway so I'm assuming he isn't available for a couple of weeks.

Best wishes,

[REDACTED]

**From:** David Clegg <[david.clegg@dctmedia.co.uk](mailto:david.clegg@dctmedia.co.uk)>  
**Sent:** 13 February 2021 17:14  
**To:** [REDACTED]@gov.scot>  
**Subject:** RE: [EXTERNAL] RE: FAO James Hamilton

Dear [REDACTED],

Given the length of time that has passed since this correspondence, I wonder if you could give me an update on whether you require more information or if Mr Hamilton's inquiry is nearing completion?

David

**From:** [REDACTED]@gov.scot>  
**Sent:** 10 December 2020 11:48



**To:** David Clegg <[david.clegg@dctmedia.co.uk](mailto:david.clegg@dctmedia.co.uk)>

**Subject:** [EXTERNAL] RE: FAO James Hamilton

Dear David Clegg,

Many thanks for your email. Please accept my apologies for the delay in written correspondence reaching you.

I have passed your response to Mr Hamilton for consideration.

Best wishes,

[REDACTED]

**From:** David Clegg <[david.clegg@dctmedia.co.uk](mailto:david.clegg@dctmedia.co.uk)>

**Sent:** 03 December 2020 22:47

**To:** [REDACTED] <[\[REDACTED\]@gov.scot](mailto:[REDACTED]@gov.scot)>

**Subject:** FAO James Hamilton

RE: SCOTTISH MINISTERIAL CODE: FIRST MINISTER'S SELF-REFERRAL

Mr Hamilton,

Apologies for the delay in responding. I did not receive your email and, as our entire organisation is currently home working, only received the paper copy of your inquiry today.

I can confirm that I contacted Geoff Aberdein on January 14, 2019 to ascertain if he was the "intermediary" who had set up the meeting between Nicola Sturgeon and Alex Salmond on April 2, 2018, at the First Minister's home.

He confirmed this was the case and subsequently sent me an email with more details. [REDACTED]

[REDACTED]

[REDACTED]

I have nothing further of note to add about my interactions with Mr Aberdein that would be relevant to your inquiry. However, [REDACTED]

[REDACTED]

In terms of the remit of your inquiry, the only other observation I would make is that during my extensive investigations into these matters in January 2019 nobody I spoke to referred to the meeting between Ms Sturgeon and Mr Aberdeen on March 29, 2018. The first I learnt of this meeting was during Mr Aberdeen's testimony in the criminal trial of Mr Salmond.

Sorry I can't be of more help. If you require any further information from me please do not hesitate to get in touch via this email address.

Yours sincerely,

David Clegg

**David Clegg**  
Editor  
The Courier

**DC Thomson & Co Ltd**  
2 Albert Square  
Dundee  
DD1 1DD

**Tel:** 01382 575530  
**Mob:** [REDACTED]  
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## Re: Sky News

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**From:** James Hamilton <[REDACTED]@[REDACTED]>  
**To:** [REDACTED]@gov.scot>  
**Date:** Tue, 16 Feb 2021 23:35:22 +0000



On Tue 16 Feb 2021 at 16:37 <[REDACTED]@gov.scot> wrote:

Hi James,

I have drafted something as discussed. I originally had something much longer but then thought the following might capture things a bit better.

Best wishes,



*Mr. Hamilton intends to complete his report as soon as possible, and is conscious that the Scottish Parliament election is scheduled to take place in early May 2021.*

*Mr Hamilton does not intend to offer comment on the process of his investigation, or the content of his report, pending the issuing of his report.*

**From:** James Hamilton <[REDACTED]@[REDACTED]>  
**Sent:** 16 February 2021 13:05  
**To:** [REDACTED]@gov.scot>  
**Subject:** Re: Sky News



Yes, that sounds good.

James

On Tue, 16 Feb 2021 at 10:52, <[REDACTED].[REDACTED]@gov.scot> wrote:

Hi James,

Sky News have sent a rather long list of questions they would like you to consider.

I have set out some thoughts on how to answer the questions as set out below.

I would suggest we use the line on timing as sent to the Committee to start off with, and then for questions 2-11 provide a general answer that explains you do not intend to comment on the process or conclusions of the report whilst it is ongoing, and that the remit sets out the matters you will investigate and key aspects of the process e.g. to whom the report will be delivered. We could also reuse some of the text from the letter you sent DFM in January on the interpretation of the remit.

If that sounds ok I can draft something up.

Best wishes,

[REDACTED]

**From:** [REDACTED]@sky.uk>  
**Sent:** 16 February 2021 10:22  
**To:**

**Subject:** SKY NEWS

Hi [REDACTED]

Hope all's well.

As discussed, I have a couple of questions for James Hamilton QC and his team. Please see below.



1. 1. When do you expect to deliver your findings?
2. 2. How many witnesses have been questioned?
3. 3. Specifically, is section 1.3 (c) relevant?
4. 4. According to your interpretation of section 1.3 (c), if the First Minister is deemed to have knowingly misled Parliament, should she resign?
5. 5. Are you enquiring into whether or not the First Minister misled Parliament with regard to her account of her meeting with Mr Salmond on 2nd April 2018?
6. 6. Does the First Minister's published account (written submission to harassment inquiry) of a meeting with Geoff Aberdein and another person in her office on 29th March 2018 form part of your enquiries?
7. 7. Will your findings include a recommended course of action with regard to the First Minister?
8. 8. Who has responsibility for actions taken as a consequence of your report?
9. 9. To whom is your report delivered?
10. 10. A recent FOI response indicated that Mr Hamilton is "not constrained in taking evidence and reporting on other aspects of the Ministerial Code he seems to be relevant." How does that square with a parliamentary answer from John Swinney MSP on 3 August 2020, in which he set out a "remit for the referral" which defined particular "events" and "key relevant extracts" from the Ministerial Code?

Many thanks

[REDACTED]

[REDACTED]

Scotland Bureau Chief | Sky News

[REDACTED]

[REDACTED]@sky.uk

[REDACTED]

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**From:** [REDACTED]  
**Sent:** 16 February 2021 10:25  
**To:** 'Douglas Ross' <douglas.ross@advocates.org.uk>  
**Subject:** FW: Draft Report [UNSCANNED]

Dear Douglas,

Please see attached near final draft of Mr Hamilton's report, for comment.

[REDACTED]

The document is password protected- I will send the password in a separate email.

Happy to discuss.

Best wishes,

[REDACTED]

**From:** James Hamilton [REDACTED]  
**Sent:** 15 February 2021 16:19  
**To:** [REDACTED]  
**Subject:** Draft Report [UNSCANNED]

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**From:** [REDACTED]  
**Sent:** 16 February 2021 14:47  
**To:** David Clegg <[REDACTED]>  
**Subject:** RE: [EXTERNAL] RE: FAO James Hamilton

Dear David,

I've checked with Mr Hamilton and I can confirm that he doesn't have any further questions for you.

Please let me know if you need anything else.

Best wishes,

[REDACTED]

**From:** David Clegg [REDACTED]  
**Sent:** 16 February 2021 12:58  
**To:** [REDACTED] <[REDACTED]@gov.scot>  
**Subject:** Re: [EXTERNAL] RE: FAO James Hamilton

Thank you for this.

D

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**From:** [REDACTED] <[REDACTED]@gov.scot> <[REDACTED]@gov.scot>  
**Sent:** Tuesday, February 16, 2021 10:53:48 AM  
**To:** David Clegg <[REDACTED]>  
**Subject:** RE: [EXTERNAL] RE: FAO James Hamilton

Dear David,

Thanks for getting in touch. I will check with Mr Hamilton if he requires more information.

In terms of timings, Mr. Hamilton intends to complete his report as soon as possible, and is conscious that the Scottish Parliament election is scheduled to take place in early May 2021.

Best wishes,

[REDACTED]

**From:** David Clegg <[REDACTED]>  
**Sent:** 13 February 2021 17:14  
**To:** [REDACTED] <[REDACTED]@gov.scot>  
**Subject:** RE: [EXTERNAL] RE: FAO James Hamilton

Dear [REDACTED],

Given the length of time that has passed since this correspondence, I wonder if you could give me an update on whether you require more information or if Mr Hamilton's inquiry is nearing completion?

David

**From:** [REDACTED]@gov.scot <[REDACTED]@gov.scot>  
**Sent:** 10 December 2020 11:48  
**To:** David Clegg <[REDACTED]>  
**Subject:** [EXTERNAL] RE: FAO James Hamilton

Dear David Clegg,

Many thanks for your email. Please accept my apologies for the delay in written correspondence reaching you.

I have passed your response to Mr Hamilton for consideration.

Best wishes,

[REDACTED]

**From:** David Clegg <[REDACTED]>  
**Sent:** 03 December 2020 22:47  
**To:** [REDACTED]@gov.scot>  
**Subject:** FAO James Hamilton

RE: SCOTTISH MINISTERIAL CODE: FIRST MINISTER'S SELF-REFERRAL

Mr Hamilton,

Apologies for the delay in responding. I did not receive your email and, as our entire organisation is currently home working, only received the paper copy of your inquiry today.

I can confirm that I contacted Geoff Aberdein on January 14, 2019 to ascertain if he was the "intermediary" who had set up the meeting between Nicola Sturgeon and Alex Salmond on April 2, 2018, at the First Minister's home.

He confirmed this was the case and subsequently sent me an email with more details. [REDACTED]

[REDACTED]

[REDACTED]



[REDACTED]

I have nothing further of note to add about my interactions with Mr Aberdeen that would be relevant to your inquiry. [REDACTED]

In terms of the remit of your inquiry, the only other observation I would make is that during my extensive investigations into these matters in January 2019 nobody I spoke to referred to the meeting between Ms Sturgeon and Mr Aberdeen on March 29, 2018. The first I learnt of this meeting was during Mr Aberdeen's testimony in the criminal trial of Mr Salmond.

Sorry I can't be of more help. If you require any further information from me please do not hesitate to get in touch via this email address.

Yours sincerely,

David Clegg

**David Clegg**  
Editor  
The Courier

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2 Albert Square  
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DD1 1DD

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## RE: Ministerial Code inquiry.

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**From:** [REDACTED] </o=tse/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=[REDACTED]fbb">  
**To:** [REDACTED]@sky.uk  
**Date:** Wed, 17 Feb 2021 13:16:34 +0000

As discussed.

FOI/202100139181 – [James Hamilton QC investigation remit correspondence: FOI release - gov.scot \(www.gov.scot\)](#)  
FOI/202100139187 – [James Hamilton QC investigation evidence submitted: FOI release - gov.scot \(www.gov.scot\)](#)

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**From:** [REDACTED]  
**Sent:** 17 February 2021 12:46  
**To:** [REDACTED]@sky.uk>  
**Subject:** Ministerial Code inquiry.

Dear [REDACTED]

SG Communications forwarded the list of questions you sent them yesterday concerning the current Ministerial Code inquiry. I am acting as the secretariat to James Hamilton, Independent Advisor, for his work on the ongoing Ministerial code investigation, so if you have any correspondence for Mr Hamilton then I am the right point of contact.

In response to your questions, Mr. Hamilton intends to complete his report as soon as possible, and is conscious that the Scottish Parliament election is scheduled to take place in early May 2021.

Mr Hamilton does not intend to offer comment on the process of his investigation, or the content of his report, pending the issuing of his report.

Happy to discuss.

Best wishes,

[REDACTED]

[REDACTED] | Secretariat to the Independent Advisor under the Ministerial Code | Please contact me on Skype or on [REDACTED]

**From:** [REDACTED]  
**To:** [James Hamilton](#)  
**Subject:** RE: Draft Report [UNSCANNED]  
**Date:** 17 February 2021 11:01:00  
**Attachments:** [Draft Scotland report 15 Feb RW.docx](#)

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Hi James,

Please see attached version with some comments and tracked changes to add in factual material where you have indicated it would be necessary. I haven't looked at the bits where there are things we need to check in the submissions or get further information but we can discuss later.

Best wishes,

[REDACTED]

**From:** James Hamilton <[REDACTED]>  
**Sent:** 15 February 2021 16:19  
**To:** [REDACTED]@gov.scot>  
**Subject:** Draft Report [UNSCANNED]

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**Report of the Independent Adviser on the Scottish Ministerial Code into the self-referral by the First Minister Ms Nicola Sturgeon into allegations that she breached the Code in respect of meetings and discussions with the former First Minister Mr Alex Salmond between 29 March 2018 and 18 July 2018 and related matters**



**Table of Contents**

## **The Remit for the Investigation**

## The remit for the investigation

The remit for the self-referral to me by the First Minister under the Scottish Ministerial Code was set out as follows by the Deputy First Minister, Mr John Swinney, in a reply to a parliamentary question in the Scottish Parliament on 3 August 2020.

“It has been alleged that the First Minister breached the Scottish Ministerial Code in that she failed to feed back the basic facts of meetings and discussions held with Alex Salmond to her private office as required by sections 4.22 and 4.23 of the Code. The meetings and discussions in question took place on:

29 March 2018 – Meeting between Ms Sturgeon and Geoff Aberdein, former Chief of Staff to Mr Salmond, Scottish Parliament

2 April 2018 - Meeting between Ms Sturgeon and Mr Salmond at Ms Sturgeon’s home.

23 April 2018 - Telephone conversation between Ms Sturgeon and Mr Salmond.

7 June 2018 - Meeting between Ms Sturgeon and Mr Salmond at SNP Conference, Aberdeen.

14 July 2018 - Meeting between Ms Sturgeon and Mr Salmond at Ms Sturgeon’s home.

18 July 2018 - Telephone conversation between Ms Sturgeon and Mr Salmond.

It has been further suggested that, in light of those meetings, the First Minister may have attempted to influence the conduct of the investigation then being undertaken by the Permanent Secretary into allegations made against Mr Salmond under the Procedure for Handling of Harassment Complaints involving Current or Former Ministers (“the Procedure”).

### Scottish Ministerial Code

The key relevant extracts from the Code are:

1.6. Ministers are personally responsible for deciding how to act and conduct themselves in the light of the Ministerial Code and for justifying their actions to Parliament and the public. The First Minister is, however, the ultimate judge of the standards of behaviour expected of a Minister and of the appropriate consequences of a breach of those standards. Although the First Minister will not expect to comment on every matter which could conceivably be brought to his or her attention, Ministers can only remain in office for so long as they retain the First Minister’s confidence.

1.7. Where he or she deems it appropriate, the First Minister may refer matters to the independent advisers on the Ministerial Code to provide him or her with advice on which to base his or her judgement about any action required in respect of Ministerial conduct. The findings of the independent advisers will be published.

## Contacts with External Individuals and Organisations, including Outside Interest Groups and Lobbyists

4.22 Ministers meet many people and organisations and consider a wide range of views as part of the formulation of Government policy. Meetings on official business should normally be arranged through Private Offices. A private secretary or official should be present for all discussions relating to Government business. Private Offices should arrange for the basic facts of formal meetings between Ministers and outside interest groups to be recorded, setting out the reasons for the meeting, the names of those attending and the interests represented. A monthly list of engagements carried out by all Ministers is published three months in arrears.

4.23 If Ministers meet external organisations or individuals and find themselves discussing official business without an official present – for example at a party conference, social occasion or on holiday – any significant content (such as substantive issues relating to Government decisions or contracts) should be passed back to their Private Offices as soon as possible after the event, who should arrange for the basic facts of such meetings to be recorded in accordance with paragraph 4.22 above.

The First Minister has, accordingly, referred the matter for consideration by one or both Independent Advisers for advice on which to base her judgement about any action required in accordance with the Code.

## Remit

The remit for the referral is to:

Review any relevant documentation relating to the meetings and discussions listed above.

Interview any Minister or official of the Scottish Government, including Special Advisers, who may have any knowledge of the facts and content of the meetings and discussions, to assess whether the Ministerial Code is engaged and, if so, whether the terms of the Code have been complied with.

Interview any relevant person outwith the Scottish Government, including the former First Minister, Alex Salmond, who may have information relating to the facts and content of the meetings and discussions.

Determine if there is any evidence that the First Minister attempted to use information discussed during those meetings and discussions to influence the conduct of the investigation being undertaken by the Permanent Secretary into allegations made against Mr Salmond under the Procedure.

Provide the Deputy First Minister with a report setting out the findings and conclusions with regard to:

i. whether the Ministerial Code is engaged regarding the meetings and discussions;

ii. whether there has been any breach of the Code and the nature of any such breach; and

iii. if a breach has occurred, advice on the appropriate remedy or sanction.  
The Independent Adviser is further invited to consider and offer views on whether the Ministerial Code might need revision to reflect the terms of the Procedure and the strict limitations it places on the involvement of the First Minister in cases which fall to be considered under the Procedure.

#### Timing

The Independent Adviser is invited to commence the investigation and submit a report as soon as possible."

In accordance with the remit I sought and received written observations from the following persons: the First Minister, Ms Nicola Sturgeon; the former First Minister, Mr Alex Salmond; the permanent Secretary to the Scottish Government, Ms Leslie Evans; Ms Liz Lloyd, a ~~Special Adviser~~ Chief of Staff to the First Minister, Mr Geoffrey Aberdein, a former Special Adviser and Chief of Staff to the former First Minister, Mr Kevin Pringle, Mr David Clegg, Mr Stuart Nicholson and Mr Peter Murrell. All of these witnesses gave me full co-operation and answered follow-up questions where necessary. I carried out follow-up interviews with a number of the witnesses where I considered clarifications were required. One person who had attended the first meeting between the First Minister and the Deputy First Minister declined to make a statement, but since he had attended that meeting in the capacity of a legal adviser to Mr Salmond this is unsurprising. I had, in any event, no power to compel any person to cooperate with the investigation

**Commented [A1]:** I have adjusted the job title for consistency

**Commented [A2]:**  
Is it necessary to include anything about subsequent clarifications which in effect widen the remit?

**Commented [A3R2]:** I think any suggestion the remit was widened might attract a lot of comment Could be worth setting out how you interpreted the remit?

# Report and Findings



## 1. Brief summary of the factual background

1.1. The principal factual background to the questions raised in the remit is as follows:

Mr Alex Salmond ~~retired~~ ~~resigned~~ as First Minister of Scotland in November 2014 and was succeeded as First Minister by Nicola Sturgeon.

1.2. In December 2017 the Scottish Government adopted a new procedure entitled "Handling of harassment complaints involving current or former ministers" (subsequently referred to in this report as the Procedure) which is described as an "internal procedure agreed in December 2017 and published in February 2018 on the Scottish Government intranet". Since 23 August 2018 it is also published on the Scottish Government's website at <https://www.gov.scot/publications/handling-of-harassment-complaints-involving-current-or-former-ministers/>.

1.3. By a letter dated 7 March 2018 Mr Alex Salmond was informed that an internal investigation had been commenced under the Procedure on 17 January 2018 in respect of two formal complaints made by civil servants about his behaviour during his time as First Minister.

1.4. [REDACTED] Mr Geoffrey Aberdeen, former Chief of Staff to Mr Salmond, met [REDACTED] Mr Aberdeen says that [REDACTED] informed him that complaints had been made against Mr Salmond. [REDACTED] disputes this. Having discussed the matter with other contacts Mr Aberdeen decided to inform Mr Salmond of the allegations and did so by telephone later that week. By that time Mr Salmond had already received the letter of 7 March informing him of the complaints.

1.5. On 29 March 2018 there was a meeting between the First Minister and Mr Aberdeen, which took place in the First Minister's office in the Scottish Parliament. [REDACTED] was also present at that meeting.

1.6. There then followed a series of meetings and telephone conversations between the First Minister and Mr Salmond.

1.7. The first of these meetings took place in the evening of 2 April 2018 at the First Minister's home. Mr Aberdeen and Ms Lloyd were present as well as Mr Duncan Hamilton who was acting as a legal adviser to Mr Salmond.

**Commented [A4]:** He announced his intention to resign on the 19<sup>th</sup> of September, and submitted his formal resignation on 18 November. Nicola Sturgeon became FM on 19 November.

**Commented [A5]:**  
Check date

1.8. On 23 April 2018 there was a telephone conversation between the First Minister and Mr Salmond.

1.9. On 23 April 2018 there was a second telephone conversation between the First Minister and Mr Salmond.

1.10. On 7 June 2018 there was a second meeting between the First Minister and Mr Salmond during the Scottish National Party Conference which took place in Aberdeen.

1.11. On 14 July 2018 there was a third meeting between the First Minister and Mr Salmond which took place at the First Minister's home.

1.12. On 18 July 2018 there was a third and final telephone conversation between the First Minister and Mr Salmond.

## **2. The adoption of the Procedure for handling complaints against Ministers and former Ministers**

2.1. In December 2017 the Scottish Government adopted a procedure entitled "Handling of harassment complaints involving current or former ministers." It is described as an "internal procedure agreed in December 2017 and published in February 2018 on the Scottish Government intranet" and is frequently referred to simply as "the Procedure" and will be referred to as such in this report. Since 23 August 2018 the Procedure is also published on the Scottish Government's website at <https://www.gov.scot/publications/handling-of-harassment-complaints-involving-current-or-former-ministers/>.

2.2. The Procedure was adopted following an extensive process of consultation involving the First Minister, the Scottish Cabinet, the Permanent Secretary and other senior officials of Scottish Government, the Scottish Parliament, the Scottish Government's People Directorate, the Scottish Government's Directorate for Legal Services, Scottish Government trade union officials, the Chief of Staff and Special Adviser to the First Minister. The draft was also shared with the Cabinet Office of the United Kingdom Government and the Scottish Government Trade Unions. The process of developing this policy and

the consultations involved are described in some detail in a document entitled *Response to Committee of the Scottish Government Handling of Harassment Complaints* (the Response Document) dated June 2020 prepared in response to a request from the Scottish Parliament's Committee on Scottish Government Handling of Harassment Complaints.<sup>1</sup>

### 2.3. The Response Document includes the following explanations of the motive behind the policy review:-

Tackling bullying and harassment, and ensuring that the Scottish Government is a more diverse and inclusive organisation, sits at the heart of the Scottish Government's organisational strategy, as it did at the time covered by this statement...

The 2016 People Survey<sup>2</sup> continued to show that a significant minority of staff (10%) said they had experienced bullying or harassment, but combined with the very low number of formal complaints raised<sup>3</sup>, this suggested a possible lack of awareness of or confidence in existing processes and procedures. This led to the appointment in spring 2017 of a Director to champion work to tackle bullying and harassment within the organisation. The focus at that time was understanding and addressing the cultures that can allow bullying and harassment to occur and to raise awareness about the drivers for positive and inclusive cultures across the organisation.<sup>4</sup>

A wider societal focus on sexual harassment and sexual abuse had been increasing at the same time, and in early October 2017 reactions to sexual abuse allegations against Harvey Weinstein brought widespread exposure to the #Me Too movement, which was seeking to tackle sexual harassment and abuse by making the scale of the problem clear. A number of allegations of sexual harassment and assault were also reported in Westminster and the Scottish Parliament during October and November 2017. These issues were a matter of considerable concern across Government and the Parliament, as well as among individual MSPs, and the public at large.<sup>5</sup>

### 2.4. The review process identified a major gap in the then existing procedure of dealing with sexual harassment claims, that is, that there was no mechanism for dealing with historic claims against former Ministers. This gap is described in the Response Document as follows:-

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<sup>1</sup> Response to Committee of the Scottish Government Handling of Harassment Complaints (Response Document) see : SP+SGHHC1+Phase+1+Written+Statement+19+June+2020.pdf (www.gov.scot)

<sup>2</sup> <https://www2.gov.scot/Topics/Research/by-topic/public-services-and-gvt/Employee-Survey/PeopleSurvey-2016>

<sup>3</sup> <https://www.gov.scot/publications/foi-17-02235/>

<sup>4</sup> Response to Committee of the Scottish Government Handling of Harassment Complaints, paragraph 4.

<sup>5</sup> Ibid., paragraph 5

19. The review process in 2017 identified that while options were available to consider potential sexual harassment complaints about serving Ministers, no such option was available in respect of former Ministers. Those involved in the review process identified that there was a gap in the coverage in terms of having a procedure that could be deployed should any historical complaints arise in Scotland. It was recognised that a number of the allegations that had emerged at Westminster related to the actions of former Ministers during their time in office.

20. On 4 November 2017, during this review process, a Scottish Government Minister resigned his Ministerial post, following allegations made from outside the Scottish Government about his personal conduct. This example reinforced for the Scottish Government the importance of making sure that it had policies and procedures in place which were capable of responding appropriately to such allegations should they arise within the Scottish Government.

21. Following the identification of that gap in the overall framework, work was put in hand to determine the most effective way to fill it...As a result, Scottish Government officials began work on the development of a new procedure that could be applied in respect of former Ministers. The first version of the procedure was created on 7 November, which was the beginning of an iterative and collaborative drafting process. In the course of the drafting of that procedure it was decided to broaden its scope to also include serving Ministers<sup>6</sup> so that there would be a single procedure that could be applied in respect of harassment complaints involving Ministers, whether current or former. This was also consistent with existing plans to review Fairness at Work. Later, following a view from the First Minister and Permanent Secretary, the procedure was amended to cover all forms of harassment, not just sexual harassment.<sup>7</sup>

2.5. It appears that its drafters did not consider that there might be any legal difficulty in applying the Procedure, designed and described as an internal Scottish Government procedure, to former Ministers who were no longer in a contractual or statutory relationship with Scottish Government and in respect of whom the previously existing harassment complaints procedure had already expired at the time of their retirement. I have not seen any legal advice which may have been provided to Scottish Government but we do know from the Response Document that Scottish Government's lawyers were consulted as part of the approval process of the Procedure.

2.6. However, when complaints were laid against the former First Minister, Mr Alex Salmond, he disputed the right of Scottish Government to apply the

<sup>6</sup> <https://secure.objectiveconnect.co.uk/share/9456-dd30-0a6c-46a6-bf88-64e2-fb7a9ff9/document/8a6f-68e1-b8b4-41c7-a936-2a01-8aa7-57ea>

<sup>7</sup> <https://secure.objectiveconnect.co.uk/share/9456-dd30-0a6c-46a6-bf88-64e2-fb7a9ff9/document/e6e3-41bf-1320-4cf0-94de-6702-045d-7286>

Procedure to him. Among many objections which he raised to the Procedure was the claim that he could not, as a former office-holder, legitimately have been made amenable to a disciplinary procedure which had been introduced on an administrative basis without any legislative underpinning. He also made a strong objection to the absence of a procedure for mediation although such an option had existed in the earlier scheme which had been replaced by the Procedure and was retained in the case of serving Ministers but not for former Ministers. Another issue was the difficulty of defending oneself while the option of a criminal complaint remained a live possibility. At least some of the issues raised by Mr Salmond raised questions of real substance rather than merely technical objections. In addition Mr Salmond claimed there had been serious irregularities in the procedures which had been followed.

3.7. It not necessary for the purposes of my remit for me to express a view on the merits of any of Mr Salmond's claims These were matters which ultimately only the Scottish courts could have decided. In the event the Scottish Government withdrew its opposition to Mr Salmond's judicial review proceedings after its own counsel, who it appeared had advised that the Government's defence was untenable, threatened to withdraw from the case. Their advice has not been released.

2.8. I understand that so far as concerns the future of the complaints procedure in respect of former Ministers and any amendments that may be required or thought desirable in the light of the failed disciplinary proceedings against Mr Salmond a separate enquiry led by [Laura Dunlop QC](#) is dealing with this question.

2.9. Any questions concerning any political responsibility for the events which occurred in relation to the adoption of the Procedure are matters for the Scottish Parliament and I do not express any opinion on these.

2.10. My brief is to enquire into whether the First Minister was in breach of the Ministerial Code. It has been made clear that in this I am not confined to the specific question of whether [of the Code was breached](#) as had been the original scope of my remit but am expected to enquire whether any breach has been committed by the First Minister.

2.11. I can find nothing in the conduct of the First Minister in respect of the introduction of the Procedure which could be considered to be a breach of the Code. The Response Document has set out the reasons for the introduction of the Procedure. In my opinion those reasons demonstrated a proper concern for the objective of strengthening the procedures for dealing with cases of harassment and bullying, especially sexual harassment, and it was perfectly proper and appropriate for the First Minister the lead this process and to give it

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Insert reference

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Insert reference

every support possible. The process was supported by advice from the most senior Scottish Government officials, including the legal department, as well as experts in the area of human resources and the handling of complaints. In my opinion the First Minister was entitled to rely on the advice she received. If there was any error in that advice- and I offer no opinion on that question- she cannot be regarded as personally in breach of the Ministerial Code because she relied on advice which was not correct. I accept the First Minister's evidence that at the time the Procedure was adopted she was not aware of any complaints or impending complaints against Mr Salmond.

2.12. A key principle in the Procedure is to avoid any risk of political interference in complaints and in particular to exclude the First Minister from any involvement in a complaint against a former Minister. In my opinion this is a legitimate and a proportionate objective of the Procedure.

2.13. As a result of this provision the First Minister excluded herself from being informed of or involved in dealing with any complaints against former Ministers which of course included the two complaints against Mr Salmond, as well as the manner in which the Scottish Government defended the legal claims brought by Mr Salmond and the handling of criminal complaints against him. In my opinion she was justified and acted properly in so excluding herself. Apart altogether from the provisions of the Procedure her long political association and personal friendship with Mr Salmond would have placed her in an invidious position and left herself open to accusations of bias and partiality had she allowed herself to become involved.

2.14. As already referred to above Mr Salmond has made a number of very serious allegations about the manner in which the complaints were investigated and dealt with including accusations of serious impropriety. I make no findings about the truth of any of these allegations which are still the subject of enquiries by the Committee on the Scottish Government Handling of Harassment Complaints of the Scottish Parliament. I accept the evidence of the First Minister that she had no involvement in these matters. I do not consider that the First Minister has any responsibility under the Ministerial Code for any shortcomings or wrongdoing in the behaviour of other persons in relation to matters from which she has properly excluded herself from any involvement.

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Insert correct title of Committee.

### 3. The operation of the Procedure



3.1. The Procedure envisages a number of options for Scottish Government employees claiming to be victims of harassment by serving or former Ministers. “An individual may choose to raise an issue involving a current or former Minister through a number of mechanisms. These may include a senior manager of your choosing, direct to HR or a Trade Union representative” (Paragraph 1). Options available to the staff member include asking that their concern is acknowledged but without further action being taken, or indicating that they wish to make a formal complaint (Paragraph 2). It is emphasised that at all times the staff member or the Scottish Government itself is free to make a complaint directly to the police Paragraphs 2.1, 18 and 19.

3.2. In the event that a formal complaint of harassment is received against a former Minister, the Director of People will designate a senior civil servant as the Investigating Officer to deal with the complaint. That person will have had no prior involvement with any aspect of the matter being raised. The role of the Investigating Officer will be to undertake an impartial collection of facts, from, (sic) the member of staff and any witnesses, and to prepare a report for the Permanent Secretary. The report will also be shared with the staff member. (Paragraph 10).

3.3. If the Permanent Secretary considers that the report gives cause for concern over the former Minister's behaviour towards current or former civil servants the former Minister should be provided with details of the complaint and given an opportunity to respond. The former Minister will be invited to provide a statement setting out their recollection of events to add to the record. They may also request that statements are taken from other witnesses. If additional statements are collected the senior officer will revise their report to include this information and submit this to the Permanent Secretary and share with the staff member. The Permanent Secretary will consider the revised report and decide whether the complaint is well-founded. The outcome of the investigation will be recorded within the SG. The Permanent Secretary will also determine whether any further action is required; including action to ensure lessons are learnt for the future. (Paragraph 11).

3.4. For complaints involving a former Minister who is a member of the Party of the current Administration, the Permanent Secretary will inform the First Minister both in this capacity and in the capacity of Party Leader, of the outcome when the investigation is complete. The First Minister will wish to take steps to review practice to ensure the highest standards of behaviour within the current Administration (Paragraph 12).

3.5. The Procedure not only does not envisage the notification of complaints made against former Ministers to the First Minister prior to the completion of the investigation but is designed to preclude her from having any role in the

process. The purpose of this provision is clearly to avoid either the reality or the appearance of political interference with the process of an investigation and how a complaint is dealt with, and to ensure the impartiality of the process. In my opinion this is a legitimate objective of the scheme.

**Commented [A9]:**

There is a need here for information on how the Procedure was adopted.

Mr Aberdeen and meetings

There were meetings

Mr Geoffrey Aberdeen who had been Chief of Staff from 2011 to December 2014 during Mr Salmond's time as First Minister and who had left government service when Mr Salmond resigned as First Minister following the SNP's defeat in the independence referendum.

**Commented [A10]:**

please let me know if this is an accurate description.

**Commented [A11]:** This looks accurate to me

[REDACTED]

[REDACTED] in the light of the "#metoo" movement, the increased focus on issues of harassment and in particular historic harassment, and the creation of a new procedure in government to address such issues, [REDACTED] if there was anything of that nature, from his time as Chief of Staff [REDACTED]

4.5. [REDACTED] had mentioned [REDACTED] in passing the previous week that the content of an official briefing provided for First Minister's Questions on the issue of sexual harassment had changed. Where the briefing had previously given a clear answer of "No" to the question of whether there had been any complaints about current or former ministers, and had stated that fewer than 5 cases of sexual harassment had been reported in the civil service the colleague had noticed that both of those statements had been removed, and a line about concerns having been raised and being considered in line with procedures was now the line that should be used. That line could have referred to either staff or ministers and did not state that an investigation was underway into a former minister or into Alex Salmond.

[REDACTED] was aware at that time of growing rumours about Mr Salmond but says that [REDACTED] was not at that stage aware of actual complaints made against him. [REDACTED]

4.7. Whilst discussing #metoo in general, [REDACTED] asked Mr Aberdein whether he was aware of anything [REDACTED]. According to [REDACTED] Mr Aberdein had no knowledge in relation to any other minister or former minister, but referred in general terms to two alleged incidents involving Mr Salmond. One was not sexual in nature.

[REDACTED] In relation to the incident that was sexual in nature [REDACTED] Mr Aberdein gave [REDACTED] a general description of the incident which he presented [REDACTED] as being in his view a minor incident [REDACTED] he named the person concerned. [REDACTED] says that he did not seem to think it was significant. [REDACTED]



[REDACTED]

4.15. [REDACTED] says that to [REDACTED] indicated that [REDACTED] reason to believe there might be a complaint and it could be about Mr Salmond. [REDACTED] says that it was an overstatement [REDACTED]

[REDACTED] says that Mr Aberdein took [REDACTED] to mean that someone within government had told [REDACTED] of a complaint and began to name individuals who might have told [REDACTED]. He suggested that he would phone some contacts who had previously worked with him who would tell him if there was a complaint. [REDACTED] did not know if there was a complaint and advised against making such calls as it seemed highly improper. If this is indeed what happened it would be hardly surprising that Mr Aberdein misunderstood [REDACTED]

[REDACTED] Mr Aberdein has a very different recollection of this meeting. He states that it is his clear recollection that [REDACTED] informed him that the Scottish Government had received official complaints about Mr Salmond. He says that [REDACTED] did not know the full details of the complaints but that [REDACTED] did tell him there were two individual complainers and named one of them. [REDACTED]

4.17. If it were a simple matter of comparing the two accounts is would not be possible to be completely certain whose account is correct, although Mr Aberdein's account is more straightforward than the rather complicated account given [REDACTED]. It is difficult to see how there can have been a misunderstanding as to what was actually said despite [REDACTED] elaborate explanation of how [REDACTED] thinks that Mr Aberdein misunderstood what [REDACTED] was saying.

However, whether it is the case that [REDACTED]

[REDACTED]

[REDACTED] There is no evidence to dispute this account. If Mr Aberdein's account is correct I think it most unlikely in any event that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] was well aware that under the Procedure harassment complaints were required to be treated in confidence and the First Minister was required not to be involved in any way in dealing with such complaints. It seems to me unlikely that the First Minister would have welcomed being potentially compromised by having rumour or gossip [REDACTED]

4.20. Mr Aberdein states that it was [REDACTED]

[REDACTED] Furthermore, what Mr Aberdein later told Mr Salmond turned out in fact to be correct.

4.21. Mr Aberdein contacted Mr Kevin Pringle and Mr Duncan Hamilton by telephone to inform them of what [REDACTED] had said about the complaints and to seek their advice about what he should do. They advised him to tell Mr Salmond. Mr Pringle has confirmed this account of what happened. Mr Hamilton declined to make a statement to me in view of his professional relationship with Mr Salmond. Mr Aberdein then informed Mr Salmond by telephone of what [REDACTED] had told him. In view of this corroboration that Mr Aberdein informed these three individuals of the conversation promptly I believe that Mr Aberdein's account of what was said by [REDACTED] about the existence of complaints is correct.

4.21. So far as concerns the significance of the meetings between [REDACTED] and Mr Aberdein for the question of a breach of the Ministerial Code, if one accepts, as I do, that [REDACTED], then the discussions between the two, whatever their content may have been, [REDACTED] in fact provide no evidence of any breach of the Ministerial Code by the First Minister. The meetings do, however, show that there was gossip and rumour about Mr Salmond at that time.

## **5. When did the First Minister become aware that there were allegations against Mr Salmond?**

5.1. The First Minister had been aware of the report on Sky News on 13 November 2017 referred to in paragraph [REDACTED] above. The report led to her having

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Insert paragraph number.



a “lingering concern” about Mr Salmond. She describes it in an interview with me in the following terms:

Round about the beginning of November 2017, just to put you in the picture, as you will recall this was at the time the whole world really was talking about the “me too” allegations, and, you know, organisations, governments, parliaments everywhere were trying to make sure they had the right processes in place. And this was around about the time we got a query from Sky News. By “we” I mean the SNP, not the Scottish Government, and that was about allegations that had been made by people at Edinburgh airport about conduct on the part of Alex Salmond.

At that point I spoke to Mr Salmond about it. You know as far as I was aware at that point we were about to see a story appear on Sky News. I spoke to him the morning after we got the press query. He seemed pretty shaken by it at that point and said he had to get to the bottom of what it was. I spoke to him again later that day when he appeared much more bullish. But the following day the Permanent Secretary had indicated to me that he had been, or his lawyers, or a bit of both, I’m not sure, had been contacting people in the Scottish Government effectively asking people that he had worked with or that might have been with him going through Edinburgh Airport to back him up and that that has caused a bit of, some disquiet on the part of those people who had been contacted. And she asked me to ask him to stop that, which I did, and he said he already had all the information he needed. So I suppose the two things that just left me with a lingering concern was the fact that- and I struggle really to go beyond what I’m about to say to you- that his contacting people in the Scottish Government had appeared to almost stir something, a hornet’s nest had been stirred kind of thing. That was the impression I got. And then he said something to me about, you know, you can’t have stories like this running because you get one and the flood gates will open kind of thing, which he immediately qualified and said “oh no, that’s not to say that I think there is anything there”. But it was just the combination of things left me with a “is there something that is about to come forward about Mr Salmond’s behaviour?” It wasn’t something I thought about every day, or worried me everyday, but it was there in the back of my mind, and that I suppose is the back drop to what unfolded at a later stage.

5.2. Nothing more seems to have been reported about the Edinburgh Airport incident subsequently. As already discussed the First Minister says she first became aware of the fact that complaints against Mr Salmond had been made at the meeting on 2 April discussed below. I am not aware of any evidence which would disprove her account.

## **6. The meeting on 29 March 2018**

On 29 March 2018 there was a meeting between the First Minister and Geoff Aberdein, former Chief of Staff to Mr Salmond, which took place in the First Minister's office in the Scottish Parliament.

## 6.2 The First Minister described in an interview the circumstances in which the meeting was held as follows:-

FM I think it was on the evening of the 28th, there's a possibility it was on the morning of the 29th, but let's assume it was the evening of the 28th, told me that had had these conversations with Geoff [Aberdein]. Geoff I think more recently had contacted if I would agree to see Alec [Salmond], there was an issue Alec wanted to talk to me about, he was in a state of great distress. thought Mr Aberdein might be in the Parliament the following day, assuming it was the previous night, that he would be in Parliament. One of colleagues, it was, somebody that Geoff had worked closely with and I think it was he might be in, he was going to try to make it in, for the birthday cake celebration and if so he might try to grab a word with me. And that is what happened.

JH: and then was he brought into your office? Was this just a discussion in the corridor so to speak?

FM: No no, we had been outside, just I don't expect you to visualise my office in Parliament but there is you know outside my office is where civil servants, special advisors work, so the member of staff whose birthday it was, civil servant, incidentally, we were outside there doing the birthday cake, singing happy birthday and Geoff had asked for a word and we went in to my office. Again, just to be clear, that would not have been the first time since Geoff had left as Chief of Staff, after I became First Minister that he had been in the office for something and had stepped in to my room for a chat. We were friends, you know, we are friends. And so he stepped into my room. From memory, I don't think was a particularly long conversation but it took place in my office.

JH: And did he give you any details at that stage about what it was about?

FM: Not, and this is where, so a combination of what I remember about this meeting and then what actually happened at my house on 2 April which we will come on to, make me very firm to the best of my recollection. Remember, this 29 March meeting had never been a significant event in my mind. To the best of my recollection no he did not give me details, it was very much he wanted to get me to agree to see to see Alec. Alec and I were very close but we hadn't been speaking as much as normal, you know I was First Minister, he was off doing other things, he had lost his seat. He wanted me to see Alec and agree to a meeting. He was telling me that he was very worried about Alec, a lot of the discussion was about Alec's state of mind. You know he seemed to be indicating that he had never heard Alec be quite so upset about anything previously, that he was very distressed, that he thought he might be about to resign his SNP membership because of the nature of the issue he was upset about. I do believe that I, partly down to what he was telling me, partly down to the Sky lingering

concerns, that it was in the realms of a potential concern or complaint about sexual misconduct. But, you know in my mind, and this was not unusual; Alec and I have worked incredibly closely for a long time, if I was being told he wanted to tell me something, in my mind I would have had to see him and hear what he wanted to tell me. That's basically, I had a general sense that it was something serious, something in the realms of a sexual complaint potentially, and he was very upset about it but I agreed, we didn't set the date of the meeting with Alec at that point, [REDACTED] But I was very clear, I was agreeing to see Alec as a friend, I was being told he was in a state of considerable distress, but also as the leader of the SNP, I was being led to believe he was on verge of resigning his membership of the party.

6.3. Mr Aberdein agrees that the initiative for this first meeting came from his making an approach on behalf of Mr Salmond. [REDACTED] states that Mr Aberdein initiated the 29 March and 2 April conversations, [REDACTED] at Mr Salmond's request. [REDACTED]

Mr Aberdein set out [REDACTED] not only did Mr Salmond want to speak with the First Minister, but that he (Mr Aberdein) had concerns about Mr Salmond's state of mind, that Mr Salmond had an issue he was handling that he wanted to discuss, and that Mr Salmond was considering leaving the SNP.

6.4. [REDACTED]

and Mr Aberdein. Mr Aberdein attended the Scottish Parliament on 29 March, joining celebrations for the sixtieth birthday of a colleague. The First Minister also briefly joined the party and [REDACTED] they stepped into her office to discuss Mr Aberdein's concerns. During the conversation he again raised an incident which [REDACTED], though he spent most of the meeting seeking to persuade the First Minister to meet Mr Salmond. She does not believe the discussion took longer than ten minutes, though Mr Aberdein was in parliament for a longer period, socialising with former colleagues. The meeting on 2 April resulted from that short conversation.

[REDACTED] Sometime following a call to Mr Salmond early in March Mr Salmond intimated to Mr Aberdein that he would like to have a meeting with the First Minister in person to set out his concerns about the Scottish Government's handling of the complaints. Mr Aberdein cannot be precisely certain when and how this was arranged [REDACTED]

Thereafter, he believes he may [REDACTED]

[REDACTED] Mr Salmond's account of how the first meeting came about is that he was contacted by phone on or around 9 March 2018 and again the following week by Geoff Aberdein, his former Chief of Staff. The purpose of the contact was to tell hi [REDACTED]

[REDACTED] Mr Aberdein said that at [REDACTED] had informed him that [REDACTED] aware of two complaints concerning Mr Salmond under a new complaints process introduced to include former Ministers. [REDACTED] named one of the complainers to him. [REDACTED]

6.9. On receipt of the letter from the Permanent Secretary first informing Mr Salmond of complaints on 7 March 2018 he had secured Levy and McRae as his solicitors and Duncan Hamilton, Advocate and Ronnie Clancy QC as his counsel.

[REDACTED] Mr Salmond and his legal advisers identified what they considered to be a range of serious deficiencies in the Procedure. There was no public or parliamentary record of it ever having been adopted. In addition they believed that it contained many elements of procedural unfairness and substantive illegality. In their opinion there was an obvious and immediate question over the extent to which the Scottish Government even had jurisdiction to consider the complaints. In relation to former Ministers (in contrast to current Ministers) the Procedure offered no opportunity for mediation. The previous complaints procedure with which Mr Salmond had been familiar ('Fairness at Work') was based on the legislative foundation of the Ministerial Code in which the First Minister was the final decision maker. He wished to bring all of these matters to the attention of the First Minister. He did not know at that stage the degree of knowledge and involvement in the policy on the part of [REDACTED] the First Minister [REDACTED]

## **7. The First Minister's failure to refer to the meeting of 29 March in her statement to the Scottish Parliament on 8 January 2019**

7.1. On 8 January 2019 the First Minister made a statement to the Scottish Parliament concerning the Procedure for Handling Complaints Involving Current or Former Ministers following the conclusion of Mr Salmond's judicial review proceedings which the Scottish Government had withdrawn their opposition to.

7.2. In the course of that statement she disclosed for the first time the series of meetings and telephone calls in which she had held discussions with Mr Salmond as follows:-

In the past, questions have also been raised about meetings that I had with Alex Salmond during the investigation, so I want to address that issue now. I met him on three occasions: on 2 April 2018 at my home in Glasgow; on 7 June 2018 in Aberdeen, ahead of the Scottish National Party conference; and on 14 July 2018, at my home. I also spoke to him on the telephone on 23 April and 18 July 2018. I have not spoken to Alex Salmond since 18 July. On 2 April, he informed me about the complaints against him, which—of course—in line with the procedure, the permanent secretary had not done. He set out his various concerns about the process. In the other contacts, he reiterated his concerns about the process and told me about proposals that he was making to the Scottish Government for mediation and arbitration. However, I was always clear that I had no role in the process. I did not seek to intervene in it at any stage—nor, indeed, did I feel under any pressure to do so.

7.3. The first and most obvious point to note is that this is technically an accurate list by the First Minister of the discussions she actually held with Mr Salmond. What has been suggested, however, is that the omission to refer to the meeting with Mr Aberdeen on 29 March during her statement to the Scottish Parliament created an incomplete and therefore misleading account.

7.4. It is agreed by all concerned in the meeting of 29 March that its purpose was to persuade the First Minister that she should meet Mr Salmond and to make the necessary arrangements if she decided to do so. Clearly Mr Aberdeen was simply a go-between and any information which he could convey was at second hand and would be superseded by whatever Mr Salmond could say at first hand if a meeting took place. The 29 March meeting, according to all participants, took no more than 10 or 15 minutes.

The First Minister recalls that shortly before the meeting of 29 March [REDACTED] and she understood that [REDACTED] the possibility of allegations emerging against Mr Salmond. This was around the same time a former Scottish Government minister resigned from the SNP over allegations against him, so the matters were topical. She understood that later in March - around 26/27 - Mr Aberdeen [REDACTED] the First Minister to meet with Mr Salmond, as there was a specific matter that he wanted to discuss with her. Mr Aberdeen indicated [REDACTED] that Mr Salmond was in a state of distress and considering standing down from the SNP [REDACTED]

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Refer to earlier paragraph quoting FM interview.

7.6. According to the First Minister's recollection at the 29 March meeting Mr Aberdeen was primarily seeking to persuade her to meet Mr Salmond. Her account of the meeting is set out at paragraph above. She recalls that the discussion covered the fact that Alex Salmond wanted to see her urgently about a serious matter, and she thinks it did cover the suggestion that that matter might relate to allegations of a sexual nature. [REDACTED]

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Insert reference

[REDACTED] The impression she had at this time was that Mr Salmond was in a state of considerable distress, and that he might be considering resigning his party membership. However, while she suspected the nature of what he wanted to tell her, it was Alex Salmond himself who told her on 2 April that he was being investigated under the Procedure and also gave the detail of the complaints against him. Mr Aberdeen agrees that the meeting was a very brief one, lasting no longer than fifteen minutes. Mr Aberdeen says that he relayed to the First Minister a broad summary of the complaints as described to him by Mr Salmond. In describing what Mr Salmond had previously told him he refers to him in the course of a telephone call having "relayed to me, in very high level, a summary of the complaints." Whatever is meant by a broad summary it is clear that the information given by Mr Salmond was much more detailed'

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[REDACTED]

7.7. The First Minister says due to the nature of the information shared with her at the meeting of 2 April it was that meeting rather than the 29 March meeting with Mr Aberdeen that has always been significant in her mind. She thinks that the assumption in her mind at the time of the 29 March discussion was that any issues of alleged sexual conduct against Mr Salmond would be related to the matter which had been raised by Sky News in the query made to the SNP in early November 2017 which concerned allegations of sexual misconduct on the part of Alex Salmond and are discussed at paragraph above.. She spoke to Mr Salmond about the allegations at the time. He denied it and, as it

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[REDACTED]

Commented [A17]:  
Insert reference.



happened, Sky did not run a story about it at that time.[ Since the identity of the individuals making the allegations was not made known to us and they did not approach the SNP directly, there was no further action that it would have been possible for them to take. However, even though he assured her to the contrary, all of the circumstances surrounding this episode left her with a lingering concern that allegations about Mr Salmond could materialise at some stage.]

Commented [A18]:

Check for repetition with Sky paragraph.

7.8. [REDACTED] a reference [REDACTED] Mr Aberdeen to an incident Mr Salmond had apologised for some time previously. However, this would have meant nothing to the First Minister as she had not been aware of any such incident at the time. That reference, however, later made sense to the First Minister in the light of what Mr Salmond subsequently told her on 2 April.

Commented [A19]:

When?

7.9. Regarding her failure to recall the 29 March meeting when addressing the Scottish Parliament on 8 January 2019 the First Minister says that it is obviously not possible for anyone to be certain of the reasons for forgetting an event. She thinks the reason this meeting was not engraved in her mind (beyond the fact that it was an unscheduled meeting in the middle of a busy day) are as alluded to in the preceding paragraph. She has expanded upon these comments as follows. Firstly, by the time she met with Mr Aberdeen, she already had what she described as a 'lingering concern' that allegations might emerge about Mr Salmond. This was as a result of the Sky media query in November 2017. In other words, the meeting was not the first time possible allegations about Mr Salmond had been raised with her. Had it been, her memory might have been more vivid. But the second, and in her opinion perhaps more relevant factor is that her meeting with Mr Salmond himself a few days later on 2 April was so significant. It was then that he told her the details of the actual complaints against him and his response to them. She thinks it is because this was such a shock to her that the earlier meeting was overwritten in her mind.

Commented [A20]:

Specify the paragraph.

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Refer to relevant paragraph

7.10. It is regrettable that the First Minister's statement on 8 January 2019 did not include a reference to the meeting with Mr Aberdeen on 29 March. In my opinion, however her explanation for why she did not recall this meeting when giving her account to Parliament, while inevitably likely to be greeted with suspicion, even scepticism, is not impossible. What tilts the balance towards accepting the First Minister's account for me is that it is difficult to think of any convincing reason why if she had in fact recalled the meeting she would have deliberately concealed it while disclosing all the conversations she had had with Mr Salmond. Furthermore, given that the meeting was with Mr Aberdeen who was in effect acting as an emissary of Mr Salmond it would have been naive to think that the meeting would remain secret given her poor relationship with Mr Salmond at that point.

7.11. Mr Salmond strongly disputes this contention. He argues that:-

In her written submission to the Committee, the First Minister has subsequently admitted to that meeting on 29 March 2018, claiming to have previously 'forgotten' about it. That is, with respect, untenable. The pre-arranged meeting in the Scottish Parliament of 29 March 2018 was "forgotten" about because acknowledging it would have rendered ridiculous the claim made by the First Minister in Parliament that it had been believed that the meeting on 2 April was on SNP Party business (Official Report 8 & 10 January 2019) and thus held at her private residence. In reality all participants in that meeting were fully aware of what the meeting was about and why it had been arranged. The meeting took place with a shared understanding of the issues for discussion - the complaints made and the Scottish Government procedure which had been launched. The First Minister's claim that it was ever thought to be about anything other than the complaints made against me is wholly false.

The failure to account for the meeting on 29 March 2018 when making a statement to Parliament, and thereafter failing to correct that false representation is a further breach of the Ministerial Code. Further, the repeated representation to the Parliament of the meeting on 2 April 2018 as being a 'party' meeting because it proceeded in ignorance of the complaints is false and manifestly untrue. The meeting on 2 April 2018 was arranged as a direct consequence of the prior meeting about the complaints held in the Scottish Parliament on 29 March 2018.

34. The First Minister additionally informed Parliament (Official Report 10 January 2018) that 'I did not know how the Scottish Government was dealing with the complaint, I did not know how the Scottish Government intended to deal with the complaint and I did not make any effort to find out how the Scottish Government was dealing with the complaint or to intervene in how the Scottish Government was dealing with the complaint.'

I would contrast that position with the factual position at paragraphs 20 and 27 above. The First Minister's position on this is simply untrue. She did initially offer to intervene, in the presence of all those at the First Ministers house on 2 April 2018. Moreover, she did engage in following the process of the complaint and indeed reported the status of that process to me personally.

7.11. It is for the Scottish Parliament to decide whether they were in fact misled. However, in my opinion the failure to disclose this meeting to the Scottish Parliament on 8 January 2019, while resulting in an incomplete narrative of events, probably was the result of a genuine failure of recollection and was not a deliberate omission. That failure did not therefore amount to a breach of the Ministerial Code.

## **8. The meeting of 2 April 2018**

8.1. The following facts concerning the meeting of 2 April are not in dispute: the meeting took place in Ms Sturgeon's home in Edinburgh. The meeting took place at Mr Salmond's request and with the First Minister's agreement. Present in the house were the First Minister, her Chief of Staff, Ms Lloyd, Mr Salmond, and Mr Aberdein. Mr Duncan Hamilton, a barrister retained on behalf of Mr Salmond was also present; his attendance had not been notified to the First Minister in advance. Mr Peter Murrell, the husband of the First Minister and Chairman of the SNP arrived home while the meeting was still taking place but took no part in it.

8.2. The meeting was in two parts, a discussion between the First Minister and Mr Salmond on their own followed by a meeting at which all five persons were present. The first part of the meeting was in private because Mr Salmond initially asked to see her privately. No permanent civil servant was present at any part of the meeting.. Ms Lloyd, as already explained, is Chief of Staff, that is, the head Special Adviser who is a salaried official of the Scottish Government, who goes out of office with a change of government and who has a political as well as an official role. The meeting was a lengthy one; the First Minister estimates between one and two hours; Mr Aberdein describes the first part of the meeting at which only the First Minister and Mr Salmond were present as lengthy.

8.3. The First Minister has stated that at the meeting Mr Salmond told her that complaints against him were being investigated under the Procedure. At that meeting, he showed her a copy of the letter he had received outlining the detail of the complaints. He shared the details of the complaints made against him under the Procedure with her and gave her his response to them.

8.4. Notwithstanding the suspicions she had harboured going into this meeting, the First Minister describes herself as shocked and upset by the reality of what she read. Mr Salmond gave her his reaction to the complaints. In the main he denied them, though in relation to one matter he said that he had previously apologised and considered it out of order for it to be raised again, and said that it was his intention to seek a process of mediation between himself and the complainers. It was also clear, contrary to what the First Minister had anticipated, that he did not intend to resign his party membership or do anything to make the matter public at that stage.

8.5. The First Minister states that as it was clear to her then that these were complaints under the Scottish Government's Procedure, she knew that she had

no role in the matter and would not be made aware of it by the Permanent Secretary until any investigation concluded. She states that she was clear to Mr Salmond that she would not intervene.

8.6. The First Minister states that she suspected the reason Alex Salmond wanted to see her on April 2 was that he was facing an allegation of sexual misconduct. The principal reason for this was the “lingering suspicion” she had formed following the alleged incident reported by Sky News on 13 November 2017 and referred to in paragraph 9.1. above. She says that her discussion with Mr Aberdeen on 29 March 2018 may have contributed to her suspicion.

8.7. In answer to the question why, if she suspected the nature of what Mr Salmond wanted to speak to her about on 2 April, she nevertheless agreed to the meeting, she states that the reasons were both personal and political. She thought Mr Salmond might be about to resign from the SNP and that, as a result of this or other aspects of how he intended to handle the matter he was dealing with, the party could have been facing a public/media issue that the SNP would require to respond to. As Party Leader, she considered it important that she knew if this was in fact the case in order that she could prepare the party to deal with what would have been a significant issue. As to the personal aspect Mr Salmond has been closer to her than probably any other person outside her family for the previous 30 years, and she was being told he was very upset and wanted to see her personally.

8.8. Although I accept the First Minister’s statement that her motivation for agreeing to the meeting was personal and political, and she may have sought to underscore this by hosting it in her private home with no permanent civil servant present and no expenditure of public money, it would, I think, be difficult to characterise it as a party meeting. Members of political parties do not ordinarily attend party meetings accompanied by their lawyers, and when the First Minister’s husband, who is chairman of the SNP, arrived home, he did not join the meeting. In fairness the First Minister did not seek to make any case to me that this was a party meeting. Nor do I read her statements in the Scottish Parliament on 8 and 10 January 2019 as having made any such assertions contrary to Mr Salmond’s assertions in his submissions to me.

8.9. The First Minister says that she took no action as a result of the meeting. Indeed this appears to be confirmed by Mr Salmond one of whose complaints is precisely that the First Minister failed to take the action he requested. In effect his request was to alter or to override the Government policy and procedure in respect of handling harassment cases which had been agreed in late 2017. It is difficult not to conclude, therefore, that an aspect of the meeting concerned this Government procedure, although of course this was a Government procedure from which the First Minister was excluded by its express terms as

a result of the policy adopted in 2017 and it seems unlikely that she could have foreseen that this request would be made.

8.10. However, in his submission Mr Salmond strongly argues that the First Minister did in fact agree to intervene in the process to secure a mediation process to resolve the complaints. He claims that she gave an assurance to that effect on 2 April. The First Minister, on the other hand, says that she was clear to Mr Salmond that she would not intervene. It is obviously impossible for anyone else to be certain what was said at a meeting where only two parties were present and do not agree what was said. It is always possible that the First Minister did not convey her message as strongly as she thought she did, or that she moderated her response so as to avoid a precipitate breakdown in relations with Mr Salmond. It is also possible that Mr Salmond heard what he wanted to hear. It is certainly the case that at no stage, perhaps even yet, did Mr Salmond appear to understand the difficulties, to say the least, that would have been involved in meeting his demands. All of this, however, is speculation. What we do know is that the First Minister did not in fact accede to Mr Salmond's demands. She did, however, tell the Permanent Secretary at a later stage that in relation to arbitration she (the Permanent Secretary) should "reach whatever decision [she] thought appropriate" (see paragraph 10.8 below). In this respect the First Minister indicated her neutrality on the issue, contrary to Mr Salmond's belief that she expressed her opposition to arbitration. Mr Salmond clearly believes that the First Minister agreed to support arbitration and then went back on that agreement. Even if that were the fact I fail to see how it would raise any issue under the Ministerial Code

## **9. The telephone call of 23 April**

9.1. The First Minister has stated that after the meeting of 2 April it was not her intention to meet with or speak to Mr Salmond about the matter again. Mr Salmond sent her a message on 22 April with a request to speak to her by telephone. When he did so she again thought it possible that he was intending to respond in a way that would make the matter public. She explains that in her opinion it would have been very much in character for him to have made a bold public declaration about the complaints made against him in order to, as he would see it, 'take control of the story'. This could have been along the lines of 'I'm standing down from the SNP while I fight to clear my name' or even a partial *mea culpa* 'I've made mistakes, but I'm not guilty of what I am accused of'. Back then, this is what she assumed he would eventually do. As Party Leader, she was keen not to be blindsided by such a development, and she explains that is why she agreed to the call.

9.2. The First Minister spoke to Mr Salmond by telephone on 23 April (the substantive call took place early in the evening after a call in the morning had to be aborted due to a poor signal). Her Chief of Staff was in the room with her during this call but not on the line. She thinks the call lasted around 10 to 15 minutes in total. During the call Mr Salmond asked the First Minister to advise the Permanent Secretary that she knew of the investigation and to persuade the Permanent Secretary to accede to Mr Salmond's request for mediation. She says she told him emphatically that she would not do so. Mr Salmond says that he phoned the First Minister by arrangement on WhatsApp to say that a formal offer of mediation was being made via his solicitor to the Permanent Secretary that day.

9.3. Mr Salmond seems during the course of his discussions with the First Minister to have referred to mediation in two distinct contexts. At a later stage he was referring primarily to mediation concerning his legal dispute with the Scottish Government. However, the absence of a provision in the Procedure for mediation between the complainers and a former Minister accused of harassment was also a source of grievance to him. The First Minister states that she was in any event clear that she would not become involved in making representations so from her point of view that distinction does not seem to have assumed any particular importance.

## **10. The decision to inform the Permanent Secretary**

10.1. Mr Salmond sent a further message to the First Minister on 31 May seeking a further meeting. The First Minister states that she initially resisted this request. She still thought it possible that Mr Salmond might 'go public', but the content of their telephone conversation on 23 April and the tenor of his text messages to her on 31 May and 1 June made her think this was unlikely at that stage. Therefore, her intention was to decline this meeting request. The text messages between them show him wishing to provide her with "material" and that she, without outrightly declining to meet, was finding reasons why a meeting was not convenient, which reasons may well have been perfectly genuine. In a text message on 1 June the First Minister writes "I'm not at home at weekend and in Aberdeen on Monday. In any event, I'd prefer a quick chat first to understand the purpose of giving me material. We've already spoken about why I think me intervening is not right thing to do. Happy to talk on what's app at some point over weekend." Mr Salmond describes this as the opposite of the assurance he says she gave on 2 April.

10.2. On 3 June Mr Salmond sent the following message:-



My recollection of our Monday 2 April meeting was rather different. You wanted to assist but then decided against an intervention to help resolve the position amicably. Now is different. I was intending to give you sight of the petition for JR drafted by senior counsel. You are a lawyer and can judge for yourself the prospects of success which I am advised are excellent. This will follow ANY adverse finding against me by the PS in a process which is unlawful. You are perfectly entitled to intervene if it is brought to your attention that there is a risk of your Government acting unlawfully in a process of which you had no knowledge. Indeed it could be argued that is your obligation under the Scotland Act is to ensure that all government actions are consistent with Convention undertakings

The JR will be rough for me since the hearing will almost certainly be made public but at least I will have the opportunity to clear my name and good prospects of doing so - but for the Government? One further thing to consider. Thus far we have been able to confine evidence offered to the general (and mostly ridiculous) matters. This has had the benefit of keeping everything well clear of current administration. When we go to Court we will have to produce evidence to demonstrate prior process (which incidentally the PS has admitted!). If you want to discuss privately then I can come to you in the North East on Monday.]

10.3. The First Minister states that the tone and content of this message changed her view of the matter. She explains that the tone of it seemed almost to her intimidatory and the content made clear he was considering legal action. As a result, she decided to inform the Permanent Secretary. The permanent Secretary confirms that she did so on 5 June following up with a letter on 6 June which is set out below.

10.4. The First Minister agreed to meet Mr Salmond and did so on 7 June. There is nothing in the tone of the messages arranging the meeting to indicate her change of opinion, but on the other hand, there was no reason why she would have disclosed this to him in advance of the meeting.

10.5. The First Minister states that her decision to inform the Permanent Secretary was not one she took lightly. Her earlier decision not to inform the Permanent Secretary of her knowledge, which she says had also not been taken lightly, had been intended to protect the integrity and confidentiality of the process.

10.6. The First Minister decided to make it known to Mr Salmond that she had informed the Permanent Secretary, and make clear again that she would not intervene as he wanted her to. She indicated to the Permanent Secretary in her letter to her that she intended to have such a conversation with him. She states that she felt it important to do this, firstly, because in her opinion Mr

Salmond can be persistent and will often interpret conversations or messages in a way that best suit his interests. She wanted to leave no room for misinterpretation. Also, she believed it highly likely that their paths would cross towards the end of that week at the SNP Conference. As it turned out, she thinks he did not attend. She considered that speaking to him in a planned way was better than having him try to 'corner' her in the course of the Conference.

10.7. The text of the First Minister's letter to the Permanent Secretary was as follows:-

Letter from FM to Permanent Secretary

STRICTLY PRIVATE & CONFIDENTIAL

6 June 2018

**For the attention of the Permanent Secretary**

On Monday 2 April I was informed by Alex Salmond that you were investigating a complaint from within the civil service about his conduct while First Minister and that the complaint relates to alleged conduct of a sexual nature.

It was clear, from what he told me, that the complaint was being investigated under the guidance put in place towards the end of last year as part of the Scottish Government's response to the public discussion around sexual harassment cases, and which contained provisions for the handling of any complaints against former Ministers. I recalled and explained that as First Minister I had no role in this process, and that I would be advised of a complaint against a former Minister only when you have concluded your investigation.

The former First Minister (FFM) contacted me again on Monday 23 April to say that he intended to propose mediation.

I told the FFM on both occasions that it would not be appropriate for me to seek to intervene in the process in any way and I did not do so.

[REDACTED]

Commented [A22]: [REDACTED]

After careful consideration, I decided not to inform you of these approaches as I did not want there to be any suggestion that I was seeking to intervene in the process.

However, I have now had a further approach from the FFM and, given its nature and that it represents a potential challenge to the process, I have decided that I should make you aware of it.

The FFM has told me that he considers the process being followed by the Scottish Government to be unlawful, that he has legal advice to the effect that he would

be successful in an application for Judicial Review of the process, and that if any finding is made against him, it is his intention to lodge an application for Judicial Review to seek to have the process declared unlawful.

I want to be very clear that my purpose sending this note is not to ask you to cease the investigation or to influence its course in any way – it is to be transparent with you about my knowledge of a potential challenge to the process. You and I have discussed on many occasions the importance of a zero tolerance approach to sexual harassment within the Scottish Government and the importance to building confidence in such an approach of taking such complaints seriously and ensuring proper investigation. I am clear that the seniority, political affiliation or relationship to me or my government of any person subject to a complaint should have no bearing on how it's handled. To that end, you have my support in taking whatever steps you consider necessary and appropriate to investigate any complaint about inappropriate conduct within the Scottish Government.

It remains my view that it would be inappropriate for us to discuss the substance of the investigation prior to its conclusion.

I intend to inform the FFM that I have told you about his approach to me and to advise him again that it would not be appropriate for me to intervene in the process.

Finally, I am also mindful of the public interest considerations that arise when allegations of this nature are made. At this stage, however, it is my view that the interest of ensuring that the conduct of the investigation is fair to all parties and respects the confidentiality of the complainant(s) is the priority.

**NICOLA STURGEON**

10.8. I enquired of the Permanent Secretary, Ms Leslie Evans, concerning her actions and involvement in the matters covered by my remit. Her reply includes the following statements:-

You asked for a statement of my actions and involvement in the matters covered by your remit. In providing such a statement, I should make clear from the outset that, as a civil servant, all my actions – including those taken in relation to this matter – are undertaken on behalf of Ministers and in keeping with the Civil Service Code.

I was not aware at the time – nor have I been made aware since - of any attempt by the First Minister to bring any influence to bear on the Scottish Government's investigation of complaints against Mr Salmond under the Procedure for Handling Harassment Complaints against Current or Former Ministers. At all times, my engagement with the First Minister was in keeping with the respective roles set out for the First Minister and Permanent Secretary in the Procedure. Accordingly, I did not inform the First Minister that formal complaints had been made about Mr

Salmond when they were received in January 2018. In line with the Procedure, I did inform the First Minister of the outcome of the investigation at a meeting on 22 August 2018 in her capacity as both First Minister and as Leader of the Party which the former Minister in question, Mr Salmond, had represented.

As I have set out in my response to your specific questions below, the First Minister wrote to me on 6 June 2018, following a discussion on 5 June 2018, informing me of contact that she had had with Mr Salmond. I replied to the First Minister on 7 June 2018 to acknowledge receipt of her letter and to note the information it contained. In addition, I also wrote to the First Minister towards the end of the investigation on 17 August 2018 to inform her I was seeking legal advice on next steps. In addition to these exchanges, the only other communication I recall with the First Minister on this matter was a telephone call sometime in mid-July in which she told me that she had met with Mr Salmond on 14 July 2018 and that he had raised the issue of arbitration with her. She made it clear to me again that she had no role in this matter and that I must reach whatever decision I thought appropriate. Accordingly, my communication with the First Minister on this issue was very limited during the period in which the investigation was in progress.

In line with the Procedure, Mr Salmond had a number of opportunities to contribute to the investigation. I address this further in my answers to your specific questions below.

The intentions that lay behind my actions at all times throughout this period were the need to follow the process set out in the Scottish Government's Procedure for Handling Harassment Complaints against Current or Former Ministers, in line with the Civil Service values of integrity, honesty, objectivity and impartiality. This was especially true in carrying out the responsibilities as Deciding Officer assigned to the Permanent Secretary under the Procedure. At no time did I experience any attempt whatsoever by the First Minister – or anyone acting on behalf of the First Minister – to influence how I undertook that role, or the decisions I came to, either in terms of the process followed or the substance of the matter. Indeed, this point is made explicit in the First Minister's letter to me of 6 June 2018: (Here the Permanent Secretary quoted from the First Minister's letter set out above).

## **11. The meeting on 7 June**

11.1. This meeting took place in Aberdeen on 7 June 2018. The First Minister says that her Chief of Staff was aware of the meeting but not present - though she did interrupt to bring it to an end as the First Minister had other matters to attend to. At the meeting on 7 June, the First Minister says she advised Mr Salmond of the action she had taken and made clear again that she was not prepared to intervene in the process. He wanted to give her a document to take

away which she believes was a legal opinion he had obtained. She declined to do so. He stated his intention to take legal action if necessary. She expressed it as her opinion that given the seriousness of the complaints against him he should consider addressing the substance of them. Mr Salmond's description of the meeting does not differ in substance from the First Minister's.

11.2. The First Minister later told the Permanent Secretary of this meeting, but says that they did not have any detailed discussion about it.

## **12. The meeting on 14 July and telephone conversation of 18 July**

12.1. Mr Salmond sent the First Minister a further message on 5 July 2018. She did not respond to this message. The message is interesting in explaining Mr Salmond's view of arbitration and how he sought to persuade the First Minister of what he saw as its advantages for the Scottish Government. I quote the relevant part of the message:-

Nicola. I have slept on the content of the latest letter from the PS rejecting arbitration. Two points I want to make to you privately. Firstly, the explanation given in the letter is that arbitration is rejected because the SG is confident in the legality of the process. With respect, that entirely misses the point. The SG may well believe it is lawful. My Senior Counsel believes it is unlawful. That's the whole point of the arbitration.

The legality will have to be resolved either in private (in a confidential and binding arbitration) or in public at the Court of Session. The SG, and you, have everything to gain from arbitration. If my legal advice is wrong, I will accept that and the current process proceeds. If the SG legal advice is wrong, you discover that without losing in a public court. Adopting an arbitration process also guarantees confidentiality for the complainers, regardless of what happens.

12.2. The next contact between Mr Salmond and the First Minister was on 13 July 2018, as a result of a message sent to Mr Salmond on WhatsApp by the Chief of Staff, Ms Lloyd, saying the First Minister wanted to meet him, which led to their third and final meeting being arranged for 14 July at her home. The First Minister states that by the time of the meeting on 14 July, she was again concerned that the matter might become public. She says that she always thought it possible, even likely, that this was the course Mr Salmond would ultimately take. Were he to take legal action, which she now knew he was considering, this could also put matters into the public domain. She was again anxious - as Party Leader and from the perspective of preparing the SNP for any potential public issue - to know whether his handling of the matter meant it was likely to become public in the near future.

12.3. At that meeting, he told the First Minister he was asking the Scottish Government to agree a process of arbitration. For reason that she did not understand then, and does not understand now, he believed she was blocking this. She told him that was not so as she had no involvement in the complaint process. She says that she suggested again that he should address the substance of the complaints rather than simply focusing on procedure. Although he indicated he would reflect on this, the First Minister believed that he was focused on his request for arbitration and seemed unwilling to accept that she would not put pressure on the Permanent Secretary to accede to it. However, she did tell the Permanent Secretary on 16 July that in relation to arbitration she (the Permanent Secretary) should “reach whatever decision [she] thought appropriate” (see paragraph 10.8 above and Paragraph 12.6 below.) In this respect the First Minister indicated her neutrality on the issue, contrary to Mr Salmond’s belief that she expressed her opposition to arbitration.

12.4. Mr Salmond sent the First Minister further messages on 15 and 16 July 2018. The First Minister states that the message of 15 July is Mr Salmond’s interpretation of her saying that she was not involved in the decision. I quote:-

Many thanks for making the time yesterday. I am grateful that you will correct the impression being given that you are against arbitration or that it is somehow against your interests. I know that you need to reflect further on how to progress things beyond that and am not blind to the difficulty of legal advice being suspicious of arbitration. I am genuinely at a loss as to what the downside is for anyone, complainers, SG or me or you. The reasons given to date have been meaningless or more recently just a misrepresentation of your position. If there are good legal reasons then surely they can be set out for you/us. I will wait to hear how you are able to proceed. I am also giving much thought to your advice and thinking deeply about how arbitration on process might open up the space and opportunity to address and resolve the underlying matters, as far as is possible, to everyone’s satisfaction.

12.5. By this time, it was clear that the First Minister’s relationship with Mr Salmond was breaking down. In her opinion he was clearly upset and angry that she was not assisting him to achieve the outcome he wanted. The First Minister states that she was also upset with him. She says that the nature of the complaints against him and the account he had given her of one of them had badly shaken her faith in him. She states, however, that in spite of that she did not want their relationship to break down completely. He had been her friend and colleague for 30 years.

12.6. The First Minister advised the Permanent Secretary on 16 July of her meeting with Mr Salmond on 14 July and made the Permanent Secretary aware of his belief that she was blocking arbitration. The First Minister made clear to



the Permanent Secretary again that she had no view on the matter and the decision was for the Permanent Secretary alone. Given the risk of legal action, she says she did not want any suggestion that an opinion attributed to her, which she had not expressed, was influencing decisions she had no part in. She reiterated to the Permanent Secretary that she must reach whatever decisions she considered appropriate and that she, the First Minister, did not seek to influence her in any way. The First Minister also told her - she thinks it was on the First Minister's return from annual leave - that she had spoken to Mr Salmond on the phone on 18 July, but she says that did not discuss the details of that conversation.

12.7. The First Minister says that it was her wish to avoid her relationship with Mr Salmond from breaking down completely that prompted her telephone call to him on 18 July. She wanted to draw a line under their contact about the matter. She was also about to take a two day summer break and she did not want it interrupted by contact from him. However, she thinks she was also hoping to make him understand and accept why she could not and would not intervene.

12.8. Mr Salmond's account of this 18 July telephone call is that the First Minister phoned him at 13.05 to say that arbitration had been rejected and suggested that this was on the advice of the Law Officers. She urged him to submit a substantive rebuttal of the specific complaints against him, suggested that the general complaints already answered were of little consequence and would be dismissed, and then assured him that his submission would be judged fairly. She told him he would receive a letter from the Permanent Secretary offering him further time to submit such a rebuttal which duly arrived later that day. Mr Salmond says that as it turned out the rebuttal once submitted was given only cursory examination by the Investigating Officer in the course of a single day and that she had already submitted her final report to the Permanent Secretary. Mr Salmond's view is now that it was believed that his submission of a rebuttal would weaken the case for Judicial Review (his involvement in rebutting the substance of the complaints being seen to cure the procedural unfairness) and that the First Ministers phone call of 18 July 2018 and the Permanent Secretary's letter of the same date suggesting that it was in his "interests" to submit a substantive response was designed to achieve that.

12.9. Later on 18 July, Mr Salmond sent the First Minister a copy of a letter he had received from the Scottish Government. She did not respond to this message. He sent her a further message on 20 July 2018. Again, she did not respond. She has had no contact with Mr Salmond since.

### **13. The Procedure for handling complaints against Ministers and former Ministers and Mr Salmond's objections to it**

13.1. As already mentioned in Chapter 2 above, in December 2017 the Scottish Government adopted the Procedure. Its full and formal title is "Handling of harassment complaints involving current or former ministers" and it is described as an "internal procedure agreed in December 2017 and published in February 2018 on the Scottish Government intranet". Since 23 August 2018 it is also published on the Scottish Government's website at <https://www.gov.scot/publications/handling-of-harassment-complaints-involving-current-or-former-ministers/>. The manner in which the Procedure is intended to operate are set out in Chapter 3 above.

13.2. As pointed out in Chapter 3 the Procedure not only does not envisage the notification of complaints made against former Ministers to the First Minister prior to the completion of the investigation but is designed to preclude her from having any role in the process. The purpose of this provision is clearly to avoid either the reality or the appearance of political interference with the process of an investigation and to ensure the impartiality of investigations. In my opinion this is a legitimate objective of the scheme,

13.3. So far as concerns the limitations on the First Minister's involvement in the Procedure in my opinion the principle of excluding any role for politicians in the resolution of complaints of harassment of public servants is not only a legitimate one but there is a strong case for maintaining it. It is appreciated that Mr Salmond and no doubt others do not share this view. Mr Salmond made a

forceful case to the effect that the Minister may intervene in the Procedure in his submission to me which I discuss below at paragraph 13.7.

13.4. In the event the process of investigation in the case of the complaints made against Mr Salmond was flawed because of the confusion of the roles involved in the process of investigation and decision-making leading to a possible conflict of interest on the part of the Investigating Officer. It is not part of my remit to examine how or why that happened or whether matters might have been handled differently. I have, however, been asked in the remit “to consider and offer views on whether the Ministerial Code might need revision to reflect the terms of the Procedure and the strict limitations it places on the involvement of the First Minister in cases which fall to be considered under the Procedure.” I am not asked in my remit to comment on whether the Procedure itself may require revision in the light of experience and it is not part of the function of the independent advisers on the Ministerial Code.

Commented [A23]:

13.5. It is of course important to learn what lessons there are from the experience gained in dealing with the complaint against Mr Salmond. In his judicial review proceedings he raised a substantial number of complaints about the procedures applied in his case. In his submission to me he has repeated his view that there are serious deficiencies in the Procedure and has identified a number of them, including the absence of a mediation procedure in the case of complaints against former Ministers as well as the more fundamental question of how a non-statutory and non-contractual scheme could bind a former Minister. It seems to me that at least some of Mr Salmond’s arguments here raise issues which require an answer. However, a report on the question whether there have been breaches of the Ministerial Code is not the place to provide that answer. Since the defence of the proceedings was abandoned by the Scottish Government there is no court decision on the merits of the various individual legal arguments made in Mr Salmond’s proceedings. It will be necessary, therefore, to examine each and every one of these issues with a view to deciding what, if any, amendments to the Procedure may be required in the light of this experience. In particular in my opinion the question of whether a relatively informal resolution procedure is appropriate at all and offers proper guarantees for the rights of all parties where the facts alleged in a complaint may also, if proved, amount to serious criminal conduct, is a matter which should receive further consideration.

Commented [A24]:

13.6. I understand such a process of review is underway in the form of [Laura Dunlop QC’s review](#). This is a more appropriate forum in which to deal with these questions. Ultimately the question of whether there are legal deficiencies in the Procedure which need to be addressed is one for the Scottish Law Officers.

Commented [A25]:

Insert appropriate reference to the expert review which is looking at this question..

13.7. Mr Salmond in his submission to me, having expressed his concern about the terms of the remit of this enquiry, among other matters stated the following:

4. ...The reason for my concern is that the remit drawn up for Mr Hamilton focuses on whether the First Minister intervened in a civil service process. As I have pointed out to Mr Hamilton, I know of no provisions in the Ministerial Code which makes it improper for a First Minister to so intervene.

5. To the contrary, intervention by the First Minister in an apparently unlawful process (subsequently confirmed by the Court of Session) would not constitute a breach precisely because the First Minister is under a duty in clause 2.30 of the Ministerial Code to avoid such illegality on the part of the Government she leads.

6. Further, to suggest intervention was a breach would be to ignore and contradict the express reliance of the procedure on the position of the First Minister as the leader of the party to which the former minister was a member in order to administer some unspecified sanction.

13.8. It is certainly correct that there is nothing in the Ministerial Code which expressly prevents the First Minister from involving herself in any process of government. However, the procedures to be followed in an internal Scottish Government enquiry into allegations of harassment were set out in the Procedure which had been adopted and agreed by the Scottish Government including the First Minister as recently as fourteen months previously. While that Procedure had not been enacted into law and it might therefore be argued that the Scottish Government could have revoked or overridden it, it could hardly be argued that the First Minister would have had any power unilaterally to do so. The Ministerial Code lays a major emphasis on the principle of collective cabinet responsibility which is as binding on the First Minister as on her ministerial colleagues.

13.9. Even had such a unilateral move by her been possible it would undoubtedly have been seen as a partisan and political interference in a process which was then underway, and as an interference of a nature which the Procedure was expressly designed to prevent. What is more the complainants had undoubtedly acted in the expectation that their complaints would be dealt with in accordance with the terms of the Procedure. What answer could have been made if these complainants in their turn had sought a judicial review of an attempt to overturn a process which was already underway? Such a U-turn would certainly have been both legally and politically impossible even had the First Minister wished to make it, which clearly she did not. One can only imagine the political reaction had the First Minister attempted to override a system expressly designed to deal with harassment complaints against former Ministers on the first occasion when it was used for this purpose. To have adopted a harassment Procedure after extensive consultation, and then to have altered it following a confidential mediation at a time when

significant complaints against a former First Minister were actually under investigation would undoubtedly have undermined public confidence in the processes of government to a much greater extent than in fact eventually happened as a result of Mr Salmond's successful judicial review.

13.10. Furthermore, to suggest that the First Minister not only could but should have intervened unilaterally to protect legality is to ignore the role of the Law Officers both under the Scotland Act and in the terms of the Ministerial Code. Paragraph 2.30 of the Code, having stated the overarching duty on Ministers to comply with the law goes on to state that it is part of the role of the Law Officers to ensure that the Government acts lawfully at all times.

13.11. It might be argued that a distinction can be drawn between an involvement in the Procedure to override the Permanent Secretary's decision as distinct from a possible involvement to insist on settling the litigation intended and subsequently brought by Mr Salmond by agreeing to his demands for mediation. In my opinion such a distinction would be wholly artificial. The First Minister acted in accordance with the spirit as well as the letter of the Procedure in declining to involve herself in questions concerning Mr Salmond's intended or actual litigation. The Procedure was one which the legal advisers to Scottish Government had been involved in drawing up. The services of the Scottish Law Officers, who under the Scotland Act 1998 are responsible for the provision of legal advice to Scottish Government, were at all times available to the First Minister and Scottish Government when the Procedure was being devised and to the Permanent Secretary when Mr Salmond's judicial review was being defended. Even on the assumption that the Law Officers got it wrong it does not follow that the First Minister was in breach of the Ministerial Code in failing to take Mr Salmond's advice.

13.12. I do not, therefore, accept that the First Minister's decision to follow the terms of the Procedure and not to seek to avoid or amend it during the course of an ongoing investigation amounted to a breach of the Ministerial Code. In my opinion for the reasons stated in the preceding paragraphs Mr Salmond's submissions in this regard are misconceived.

#### **14. The Ministerial Code: Contacts with External Individuals and Organisations, including Outside Interest Groups and Lobbyists**

15.1. Sections 4.22 and 4.23 of the Ministerial Code provide as follows:-

Commented [A26]:  
Check when litigation brought.

4.22 Ministers meet many people and organisations and consider a wide range of views as part of the formulation of Government policy. Meetings on official business should normally be arranged through Private Offices. A private secretary or official should be present for all discussions relating to Government business. Private Offices should arrange for the basic facts of formal meetings between Ministers and outside interest groups to be recorded, setting out the reasons for the meeting, the names of those attending and the interests represented. A monthly list of engagements carried out by all Ministers is published three months in arrears.

4.23 If Ministers meet external organisations or individuals and find themselves discussing official business without an official present – for example at a party conference, social occasion or on holiday – any significant content (such as substantive issues relating to Government decisions or contracts) should be passed back to their Private Offices as soon as possible after the event, who should arrange for the basic facts of such meetings to be recorded in accordance with paragraph 4.22 above.

14.2. It seems to have been generally assumed, even in the terms of the remit itself, that section 4.22 of the Ministerial Code applied to the meetings between the First Minister and Mr Salmond. I begin by saying that I do not accept that these meetings can be considered as SNP party meetings for the reasons stated in paragraph 9.8 of this report in which I discuss the character of the meeting of 2 April. The First Minister has accepted that before that first meeting with Mr Salmond she suspected the reason Alex Salmond wanted to see her on April 2 was that he was facing an allegation of sexual misconduct. As already explained I accept her statement that her motives for agreeing to the meeting were partly political and partly personal.

14.3. From the first sentence of paragraph 4.22 of the Code it is clear that the primary, and possibly the sole purpose of this provision is to deal with meetings with people and organisations which are held or can be considered “as part of the formulation of Government policy.” This is reinforced by the subsequent requirement in the paragraph “for the basic facts of formal meetings between Ministers and outside interest groups to be recorded, setting out the reasons for the meeting, the names of those attending and the interests represented.” Paragraph 4.23 then extends the provision to deal with the situation where informal meetings or discussions take place but again this is qualified by confining it to discussions containing “any significant content (such as substantive issues relating to Government decisions or contracts)”. Ministers must have numerous contacts every day which are not required to be recorded under this provision. The other highly significant aspect of this provision is that it applies only to “contacts with *external* individuals and organisations, including *outside* interest groups and lobbyists.” (Emphasis added).



14.4. We know what the discussions were about. They concerned a governmental process for dealing with harassment complaints against Scottish Government Ministers, former Ministers and officials generally known as “the Procedure”. As already stated its full and formal title is “Handling of harassment complaints involving current or former ministers” and it is described as an “internal procedure agreed in December 2017 and published in February 2018 on the Scottish Government intranet”. Since 23 August 2018 it is also published on the Scottish Government’s website at <https://www.gov.scot/publications/handling-of-harassment-complaints-involving-current-or-former-ministers/>.

14.5. Note that the procedure is clearly described as an internal procedure. It did not apply to anybody who did not and never had worked for Scottish Government. Indeed it was precisely the claim made by Scottish Government to have jurisdiction over harassment carried out by former Ministers during their time in office which formed a major bone of contention between Mr Salmond and the Scottish Government. In my opinion any person who was being proceeded against under the Procedure, or for that matter was making a complaint under its provisions, was entitled to raise an issue without the matter being recorded under these provisions of the Code. I fully accept the logic of the First Minister’s position that it would have been impossible to record such meetings or discussions without a risk of prejudicing the proceedings or interfering with their confidentiality.

14.6. In my opinion, therefore, neither the letter nor the spirit of paragraphs 4.22 and 4.23 of the Ministerial Code applied to the discussions between the First Minister and Mr Salmond. Consequently I do not consider that the First Minister acted in breach of the Code in not disclosing them prior to 5 June.

## **15. The alleged leak to the Daily Record**

15.1. Mr Salmond has asked for an investigation into whether an alleged criminal leak of part of the contents of the Permanent Secretary’s Decision report to the Daily Record was sourced from the First Minister’s Office.

15.2. It is no part of my function and I have no power to investigate criminal offences. If Mr Salmond has evidence it is a matter for the police.

## **16. Conclusions**



## RE: FW: FAO James Hamilton QC

---

**From:** [REDACTED]@gov.scot>  
**To:** James Hamilton <[REDACTED]@[REDACTED]>  
**Date:** Wed, 17 Feb 2021 10:13:21 +0000

Hi James,

That would be great. Would later morning be ok, 12 perhaps?

Best wishes,

[REDACTED]

**From:** James Hamilton <[REDACTED]@[REDACTED]>  
**Sent:** 17 February 2021 09:38  
**To:** [REDACTED]@gov.scot>  
**Subject:** Re: FW: FAO James Hamilton QC

Hi [REDACTED]

Can we discuss on the phone? I will be free at about 10.30.

James

On Tue 16 Feb 2021 at 16:31 <[REDACTED]@gov.scot> wrote:

Hi James,

Jackie Baillie has been in touch asking about timeframes for the report- I think she will want something fairly specific.

Best wishes,

[REDACTED]

---

**From:** [REDACTED]@parliament.scot> On Behalf Of Baillie J (Jackie), MSP  
**Sent:** 16 February 2021 13:33  
**To:** [REDACTED]@gov.scot>  
**Subject:** FAO James Hamilton QC

Dear Mr Hamilton,

I write in regard to the report that you will publish following your investigation into the conduct of the First Minister. I understand that your investigation is still ongoing but that you have previously said you aim to publish your findings prior to the May 6 Holyrood elections.

I would be grateful if you could share with me a more specific timetable for when you anticipate the report will be published.

Many thanks,

Jackie

**Jackie Baillie MSP**  
Dumbarton Constituency  
The Scottish Parliament, Edinburgh, EH99 1SP  
[REDACTED]

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<http://jackiebaillie.laboursites.org/privacy-policy/>

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## RE: FAO James Hamilton QC

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**From:** [REDACTED]@gov.scot>  
**To:** "Baillie J (Jackie), MSP" <jackie.baillie.msp@parliament.scot>  
**Date:** Wed, 17 Feb 2021 13:24:44 +0000

Hi [REDACTED],

I am emailing to confirm that this email has been received and Mr Hamilton is considering it.

Best wishes,

[REDACTED]

---

**From:** [REDACTED]@parliament.scot> **On Behalf Of** Baillie J (Jackie), MSP  
**Sent:** 16 February 2021 13:33  
**To:** [REDACTED]@gov.scot>  
**Subject:** FAO James Hamilton QC

Dear Mr Hamilton,

I write in regard to the report that you will publish following your investigation into the conduct of the First Minister. I understand that your investigation is still ongoing but that you have previously said you aim to publish your findings prior to the May 6 Holyrood elections.

I would be grateful if you could share with me a more specific timetable for when you anticipate the report will be published.

Many thanks,

Jackie

**Jackie Baillie MSP**  
Dumbarton Constituency  
The Scottish Parliament, Edinburgh, EH99 1SP  
[REDACTED]

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<http://jackiebaillie.laboursites.org/privacy-policy/>

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**From:** [REDACTED]

**Sent:** 18 February 2021 15:12

**To:** [REDACTED]

**Subject:** [REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

**From:** James Hamilton [REDACTED]  
**Sent:** 18 February 2021 13:48  
**To:** [REDACTED]  
**Subject:** Re: Draft Report [UNSCANNED]

Hi [REDACTED]

I have accepted your changes and made some more. Changes are tracked and the comments deleted where the changes were made. New draft attached,

[REDACTED]

[REDACTED]

Best wishes

James

On Wed, 17 Feb 2021 at 11:01, [REDACTED] wrote:  
Hi James,

Please see attached version with some comments and tracked changes to add in factual material where you have indicated it would be necessary. I haven't looked at the bits where there are things we need to check in the submissions or get further information but we can discuss later.

Best wishes,

[REDACTED]

**From:** James Hamilton [REDACTED]  
**Sent:** 15 February 2021 16:19  
**To:** [REDACTED]  
**Subject:** Draft Report [UNSCANNED]

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## Re: Email for Jackie Baillie

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**From:** James Hamilton <[REDACTED]@[REDACTED]>  
**To:** [REDACTED]@gov.scot>  
**Date:** Thu, 18 Feb 2021 10:54:09 +0000

Hi [REDACTED]

Looks good- please go ahead.

James

On Thu, 18 Feb 2021 at 09:21, <[REDACTED]@gov.scot> wrote:

Hi James,

Please see draft text to reply to Ms Baillie,

Best wishes,

[REDACTED]

Dear Ms Baillie,

Thank you for your email.

I am nearing the end of my investigation and intend to produce my final report as soon as possible. As noted in the PQ response setting out the details of my remit, if required, the report will be redacted to ensure compliance with the relevant court orders, and so there are various checks that need to take place on the report once drafted. At this point I am unable to indicate an exact timescale within which these various stages of work will be completed.

I understand that, as is usual practice for Ministerial Code reports, the Scottish Government will co-ordinate the publication of the report.

Yours sincerely,

James Hamilton

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## Re: Letter for Mr Salmond

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**From:** James Hamilton <[REDACTED]@[REDACTED]>  
**To:** [REDACTED]@gov.scot>  
**Date:** Thu, 18 Feb 2021 14:39:43 +0000

Perfect!  
J

On Thu, 18 Feb 2021 at 11:07, <[REDACTED]@gov.scot> wrote:

Hi James,

Please see attached draft letter for Mr Salmond.

Best wishes,

[REDACTED]

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## Re: FW: MR. HAMILTON

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**From:** James Hamilton <[REDACTED]@[REDACTED]>  
**To:** [REDACTED]@gov.scot>  
**Date:** Thu, 18 Feb 2021 14:43:35 +0000

In fact, in the Far East I am always known as Mr James!

On Thu, 18 Feb 2021 at 14:42, James Hamilton <[REDACTED]@[REDACTED]> wrote:  
Hi [REDACTED]

No. Ireland has had a republican form of government since 1937!

I am just plain Mister (like all the best surgeons!)

James

On Thu, 18 Feb 2021 at 13:31, <[REDACTED].[REDACTED]@gov.scot> wrote:

Hi James,

Hopefully a straightforward question but wanted to check with you in case there are any complexities!

Best wishes,

[REDACTED]

**From:** [REDACTED]@sunday-times.co.uk>  
**Sent:** 18 February 2021 13:24  
**To:** [REDACTED]@gov.scot>  
**Subject:** MR. HAMILTON

Hi [REDACTED],

Can you clear a simple matter of fact for me?

Is Mr. Hamilton a QC?

I keep reading this on social media and on the Scottish government website.

Best regards,

[REDACTED]  
Sunday Times  
[REDACTED]

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**From:** [REDACTED]  
**Sent:** 18 February 2021 18:35  
**To:** Douglas Ross <douglas.ross@advocates.org.uk>  
**Subject:** Compliance with court orders

Hi Douglas,

Hope you are well.

I know you're looking at some of these issues at the moment and will have much more detail on this, but wanted to bring you up to speed on something we have received today. I've deliberately avoided detail of names etc. in case this causes any issues, but would be happy to discuss over the phone if that would be helpful.

[REDACTED]

[REDACTED]

Happy to discuss.

Best wishes,

[REDACTED]

[REDACTED]

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## RE: FAO James Hamilton QC

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**From:** "Baillie J (Jackie), MSP" <jackie.baillie.msp@parliament.scot>  
**To:** [REDACTED]@gov.scot>  
**Date:** Fri, 19 Feb 2021 12:19:49 +0000

Many thanks [REDACTED]

Best wishes

Jackie

**Jackie Baillie MSP**  
Dumbarton Constituency  
The Scottish Parliament, Edinburgh, EH99 1SP  
[REDACTED]

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<http://jackiebaillie.laboursites.org/privacy-policy/>

---

**From:** [REDACTED]@gov.scot <[REDACTED]@gov.scot>  
**Sent:** Friday, February 19, 2021 11:56 AM  
**To:** Baillie J (Jackie), MSP <Jackie.Baillie.msp@parliament.scot>  
**Subject:** RE: FAO James Hamilton QC

**CAUTION:** This e-mail originated from outside of The Scottish Parliament. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Dear Ms Baillie,

Please see below response from Mr Hamilton.

Best wishes,

[REDACTED] [REDACTED]

Dear Ms Baillie,

Thank you for your email.

I am nearing the end of my investigation and intend to produce my final report as soon as possible. As noted in the PQ response setting out the details of my remit, if required, the report will be redacted to ensure compliance with the relevant court orders, and so there are various checks that need to take place on the report once drafted. At this point I am unable to indicate an exact timescale within which these various stages of work will be completed.

I understand that, as is usual practice for Ministerial Code reports, the Scottish Government will co-ordinate the publication of the report.

Yours sincerely,

James Hamilton

---

**From:** [REDACTED]  
**Sent:** 17 February 2021 13:25  
**To:** 'Baillie J (Jackie), MSP' <[Jackie.Baillie.msp@parliament.scot](mailto:Jackie.Baillie.msp@parliament.scot)>  
**Subject:** RE: FAO James Hamilton QC

Hi [REDACTED],

I am emailing to confirm that this email has been received and Mr Hamilton is considering it.

Best wishes,

[REDACTED]

---

**From:** [REDACTED] <[REDACTED]@parliament.scot> On Behalf Of Baillie J (Jackie), MSP  
**Sent:** 16 February 2021 13:33  
**To:** [REDACTED] <[REDACTED]@gov.scot>  
**Subject:** FAO James Hamilton QC

Dear Mr Hamilton,

I write in regard to the report that you will publish following your investigation into the conduct of the First Minister. I understand that your investigation is still ongoing but that you have previously said you aim to publish your findings prior to the May 6 Holyrood elections.

I would be grateful if you could share with me a more specific timetable for when you anticipate the report will be published.

Many thanks,

Jackie

**Jackie Baillie MSP**  
Dumbarton Constituency  
The Scottish Parliament, Edinburgh, EH99 1SP  
[REDACTED]

*For more information on my privacy policy, please click here:*  
<http://jackiebaillie.laboursites.org/privacy-policy/>

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**From:** [REDACTED]  
**Sent:** 19 February 2021 09:26  
**To:** James Hamilton [REDACTED]  
**Subject:** FW: [REDACTED]

Hi James,

[REDACTED]

Best wishes,

[REDACTED]

**From:** Douglas Ross [REDACTED]  
**Sent:** 18 February 2021 21:27  
**To:** [REDACTED] <[\[REDACTED\]@gov.scot](mailto:[REDACTED]@gov.scot)>  
**Subject:** RE: [REDACTED]

Dear [REDACTED]

I was on the point of sending you a lengthy e-mail when your e-mail below came in [REDACTED]

[REDACTED] I had, naturally, not anticipated this development and am committed to spending most of tomorrow (and probably a good deal of the weekend) on two other matters with urgent deadlines. While I will return to working on the Ministerial Referral ASAP, I'm afraid that it is likely to be next week before I am able to spend much time on it. In the meantime, I set out below a shorter version of the e-mail I had been about to send with preliminary observations and queries in relation to the matters on which you have sought my advice.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



ac  
te  
d]

Happy to discuss any matters arising.

Regards

Douglas

**Douglas Ross QC** Ampersand Advocates

web: [www.ampersandadvocates.com](http://www.ampersandadvocates.com)

Clerk: [Alan Moffat](#)

Deputy clerks: [Jennifer Dunn](#), [Sheena Hume](#), [Shawn McArthur](#) & [Kathryn Ferguson](#)



*Leading Top Ranked Set in Chambers & Partners and The Legal 500*

**From:** [redacted]@gov.scot>

**Sent:** 18 February 2021 18:35

**To:** Douglas Ross [redacted]

**Subject:** [redacted]

Hi Douglas,

Hope you are well.

I know you're looking at some of these issues at the moment and will have much more detail on this, but wanted to bring you up to speed on something we have received today. I've deliberately avoided detail of names etc. in case this causes any issues, but would be happy to discuss over the phone if that would be helpful.

[redacted]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**From:** Alex Salmond [REDACTED]  
**Sent:** 19 February 2021 07:42  
**To:** [REDACTED]@gov.scot>  
**Subject:** Letter for James Hamilton

Dear [REDACTED]

Could you please pass this correspondence to Mr James Hamilton in answer to his recent letter and questions of 9th February?

Best Wishes

Alex Salmond

Mr James Hamilton  
Independent Adviser on the Ministerial Code  
19 February 2021

Dear Mr Hamilton

Further to your letter of 9th February and my reply of the 11th, I have had the opportunity to consult my records and am now in a position to answer your follow up questions.

Mr Aberdein did phone me on the 9th of March 2018 and gave me an outline of information he had been given [REDACTED]. It was very much a brief and one way conversation as I was travelling in a car with other people.

We arranged to speak again a few days later (I believe the 14th of March) with further information when we were able to discuss in private what he had been told and discuss what was to be done. I have no doubt that Mr Aberdein told me that the information he had been given [REDACTED] was that there were two complaints being investigated, that one was regarded as a significant complaint and one not, and that he named one of the complainants. He said [REDACTED]

[REDACTED] I cannot be absolutely certain that Mr Aberdein imparted the specific information on the name of one of the complainants in our first or second conversations but I am 100 per cent certain that he did so in one of these two conversations and that this was the first time that anyone had done so.

At that time I had received a letter from Ms Evans on the 7th March 2018. This outlined purported incidents but not the names of the complainants. Identifying these was difficult because as it transpired every single date or location (where one was given) turned out to be incorrect. I enclose as Appendix A, a passage from one of my solicitors' letters to Ms Evans of 20th July 2018. This specifies the difficulties which were placed in our way in knowing of what I was being accused and by whom. The full letter is published on the SGHHC website. I recognised the name given to me by Mr Aberdein but was not able to identify [REDACTED]

I have already given you permission to speak to my legal representatives to corroborate my account of the First Minister's later conversation with me in July 2018. This also applies to the information given to me by Geoff Aberdein [REDACTED] as I know he had spoken to my advocate Duncan Hamilton at that time. I have, therefore, intimated to Mr Hamilton that in order to confirm factual events and recollections relevant to your investigations I am content that he provide answers to any questions you may have.

In my letter I mentioned to you that I had come across further information when preparing to give evidence to the parliamentary Committee. This concerns the

pleadings made by Government in the Open Record of the Judicial Review in December 2018 (which said Record has been published on the SGHHC website as part of their Inquiry) which also contains the claim subsequently made to parliament that the first knowledge the First Minister had of complaints against me was in April 2018. I enclose these at Appendix B. As you will see the terms of this are quite specific and the First Minister was the “interested party” in the case and responsible for these pleadings to court. It says “she first became aware of the existence of an investigation into the petitioner’s conduct in April 2018 when the petitioner made her so aware”

I know this not to be true and would further add that if indeed the First Minister had “forgotten” about the meeting in her office on March 29th 2018 only to be reminded of it shortly after her parliamentary statement of January 2019 (FM written evidence Parliamentary Inquiry Annex A) then her proper course of action under the Ministerial Code was to correct the parliamentary record at the earliest opportunity, not 18 months later after a report on the 29th March meeting had appeared on Sky Television on Monday 27th July 2020. Instead over that period it was officially and publicly denied that there had been any such meeting covering this subject of complaints, including in response to the Sky report itself;

*A Scottish government spokesperson told Sky News that Ms Sturgeon does not dispute that the 29 March meeting took place but refutes the suggestion that it involved discussion of the Scottish government's Salmond inquiry.*

*Sky News asked the Scottish government several questions regarding the meeting on 29 March 2018.*

*We asked if the Alex Salmond investigation was indeed discussed. A spokesperson replied: "The first minister stands by her statement to parliament".*

The first public acknowledgement was within the terms of reference to this investigation in answer to an arranged parliamentary question on 4th August 2020.

I am at your disposal if you require further questions or to speak directly.

Yours for Scotland

Rt Hon Alex Salmond

of 149

1. Our client has had no access to the statements of the complainers or of any other witnesses;
2. He has no means available to him to fully investigate: the circumstances in which these complaints came to be made at the same time despite the years which have elapsed since the alleged conduct occurred; how they came to be made so soon after the introduction of the 2017 Procedure; [REDACTED]
3. He was not given the IO's preliminary report or any other documents connected to the allegations;
4. From the outset he was denied the opportunity to consult official records and diary entries. In the recent past he was able to obtain his official diaries through a subject data request. This has enabled him to provide a limited further response to some of the complaints. The copies of the diary provided to him are redacted thereby denying our client access to the names of persons who he might otherwise have approached as potential witnesses;
5. He was not been provided with a witness list;
6. He was prohibited from contacting witnesses who are civil servants;
7. He was prevented from putting the content of the allegations to prospective witnesses;
8. He was not allowed to present his own evidence but instead was expected to rely on the IO to select and present his evidence as she saw fit;
9. The IO has clear conflicts of interests. First, as the person who gathers and presents the evidence on which the complaints are based and as the person who is supposed to prepare and present evidence for the former minister. Second, as the person who is responsible for investigating the complaints and as the person responsible for making purported findings in fact.
10. Our client is not allowed to see the evidence for or against him or the IO's revised report before you purport to make a decision;
11. He is denied the opportunity or the means to make submissions to you before you purport to make the decision;
12. The prejudice suffered by our client from the procedural defects summarised above are exacerbated by the fact that the complaints concern events which are alleged to have occurred several years ago.

Yours faithfully

[REDACTED]  
Solicitor Advocate

---

## **APPENDIX B - Open Record**

P850/18

IN THE COURT OF SESSION.

September , 2018.

### **R E C O R D**

**(As Adjusted to 4th December 2018)**

**(As further adjusted to 13 December 2018)**

on

PETITION and ANSWERS

ALEX SALMOND

against

LESLIE EVANS and OTHERS

for

Judicial Review.

DAC Beachcroft Scotland LLP,  
Solicitors for Petitioner.

Scottish Government Legal  
Directorate,  
Solicitors for Respondents.

### **R E C O R D**

on

PETITION and ANSWERS

ALEX SALMOND, c/o Levy & McRae, Pacific House, 70 Wellington  
Street, Glasgow, G2 6UA, -

PETITIONER:

against

(FIRST) LESLIE EVANS, Permanent Secretary to the Scottish Government,  
St. Andrews House, Regent Road, Edinburgh, EH1 3DG; and (SECOND)  
THE SCOTTISH MINISTERS, St. Andrews House, Regent Road, Edinburgh,  
EH1 3DG, -

RESPONDENTS:

for



Judicial Review of a purported decision of LESLIE EVANS, Permanent Secretary of the Scottish Government (the first respondent) dated 21st August, 2018 under and in terms of A Procedure For Handling Complaints Involving Current or Former Ministers.

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I N D E X

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communicated to the interested party. She first  
became aware of the existence of an investigation  
into the petitioner's conduct in April 2018 when the  
petitioner made her so aware. The Procedure is one

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**From:** Alex Salmond <alex@alexsalmond.scot>  
**Sent:** 20 February 2021 01:54  
**To:** [REDACTED]  
**Subject:** Re: Correspondence from Mr Hamilton [UNSCANNED]

Dear [REDACTED]

Happens to me all the time.

Looking at the terms of Mr Hamilton's letter could you also confirm to him that I would like to speak with him by video on my evidence. If it were suitable for Mr Hamilton I would be free on Friday next, 26th February.

Yours for Scotland

ALEX SALMOND

Sent from my iPad

On 19 Feb 2021, at 19:23, [REDACTED] wrote:

Dear Mr Salmond,

Apologies, I hadn't seen anything come in earlier. I have now checked the obvious things that could have gone wrong, and found that for some bizarre reason your email had gone into my junk mail folder despite our previous correspondence.

Please accept my apologies for this- I will forward your email from this morning to Mr Hamilton now.

Best wishes,

[REDACTED]

**From:** Alex Salmond <[alex@alexsalmond.scot](mailto:alex@alexsalmond.scot)>

**Sent:** 19 February 2021 17:24

**To:** [REDACTED]

**Subject:** Re: Correspondence from Mr Hamilton [UNSCANNED]

[REDACTED]

Has this letter crossed with my email?

I sent the answers this morning with a note and two appendices. Could you let me know you have received everything.

Best Wishes

Alex Salmond

Sent from my iPad

On 19 Feb 2021, at 17:18, [REDACTED] wrote:

Dear Mr Salmond,

Please see attached correspondence from Mr Hamilton.

Best wishes,

[REDACTED]

**From:** [REDACTED]  
**Sent:** 12 February 2021 12:40  
**To:** 'Alex Salmond' <[alex@alexsalmond.scot](mailto:alex@alexsalmond.scot)>  
**Subject:** RE: Correspondence from Mr Hamilton

Dear Mr Salmond,

Thank you for your response. I have passed this to Mr Hamilton, who is happy that you provide written statements to the supplementary questions. However, if you would like to discuss matters Mr Hamilton would also be happy to arrange a video interview.

Best wishes,

[REDACTED]

**From:** Alex Salmond <[alex@alexsalmond.scot](mailto:alex@alexsalmond.scot)>  
**Sent:** 11 February 2021 09:56  
**To:** [REDACTED]  
**Subject:** Re: Correspondence from Mr Hamilton

Dear [REDACTED]

Thank you for your note. I enclose a reply to Mr Hamilton.

Best Wishes

Alex Salmond

Mr James Hamilton

Independent Adviser on the Scottish Ministerial Code

11th February 2021

Dear Mr Hamilton

Thank you for your letter of 9th February.

If I may I shall reply within a few days when I have the opportunity to consult my notes. In addition, in preparing evidence for the Parliamentary Inquiry, I have come across some further documentary corroboration for points which I have already made.

I will be happy to send you this material along with the answers to your questions and provide a video interview as well if required.

Yours for Scotland

Rt Hon Alex Salmond

Sent from my iPad

On 9 Feb 2021, at 17:03, [REDACTED] wrote:

Dear Mr Salmond,

Please see attached correspondence from Mr Hamilton.

Best wishes,

[REDACTED]

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<Salmond letter Feb 19 2021.docx>

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**Letter and note [UNSCANNED]**

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**From:** James Hamilton <[REDACTED]@[REDACTED]>  
**To:** [REDACTED] <[REDACTED]@gov.scot>  
**Date:** Sun, 21 Mar 2021 16:52:34 +0000  
**Attachments:** 21 March JH Edit Covering letter- DFM Report- updated 20 March 2020 (1) (2).docx (16.9 kB)

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James Hamilton  
Independent Adviser on the Scottish Ministerial Code

c/o E: [REDACTED]

John Swinney, Deputy First Minister  
By email

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21 March 2021

Dear Mr Swinney,

## **MINISTERIAL CODE REFERRAL- REPORT**

In accordance with my role as independent adviser on the Ministerial Code, I have investigated the matters set out in the remit for the investigation into the First Minister's self-referral under the Ministerial Code.

I enclose my final report, which addresses the questions set out in the remit, including whether the Ministerial Code is engaged regarding the meetings and discussions included in the remit; and whether there has been any breach of the Code and the nature of any such breach.

In the course of my investigation, participants have provided statements which raised additional issues that I considered relevant to the remit. Accordingly, the report covers these matters and considers whether there has been any breach of the Code and the nature of any such breach.

I understand that, in order to comply with certain court orders, it will be necessary to make significant redactions to the enclosed report before

publication. I have enclosed a short note setting out my views on this matter. I request that, in order to make my position on these issues clear, this be published alongside the report.

The remit also invited me to consider and offer views on whether the Ministerial Code might need revision to reflect the terms of the Procedure. I consider that this aspect of the remit would be best delivered alongside the consideration of any updated Procedure, and by both Ministerial Code advisers. Accordingly, I would propose to work with the other Ministerial Code adviser to prepare recommendations on this topic.

I note that the report is to be published on the day it is received.

Yours sincerely,

James Hamilton

## Note on the publication of a redacted report

I have enclosed a copy of my report, without redacting anything which I considered relevant, and which is drafted in such a way as to fulfil the remit I was set in the way I consider necessary to give a full account of the matters I was asked to report on and the basis for my conclusions.

I understand that in order to comply with certain court orders it will be necessary to make redactions to the enclosed report before publication. This is so as to avoid the phenomenon known as jigsaw identification.

In particular, I have been advised by my own independent legal adviser that nothing may be published which could identify certain particular individuals some of whom had a significant role in certain events. A redacted report that effectively erases the role of any such individual in the matters investigated in the report cannot be properly understood by those reading it, and presents an incomplete and even at times misleading version of what happened. In earlier drafts of the report I attempted to anonymise certain individuals in such cases but these attempts were not successful.

It is therefore impossible to give an accurate description of some of the relevant events dealt with in the report while at the same time complying with the court orders.

I am deeply frustrated that applicable court orders will have the effect of preventing the full publication of a report which fulfils my remit and which I believe it would be in the public interest to publish .

A key part of the report necessarily refers to certain events prior to 29 March 2018, which are highly significant for understanding who was aware of complaints made against Mr Salmond and what they did with that information. These discussions set in train a series of events which ultimately led to the meeting between the First Minister and the Former Chief of Staff on 29 March and the subsequent contacts between the First Minister and Mr Salmond. It is also essential to a full and true understanding of what happened to be able to discuss fully why, how and by whom these meetings were arranged.

Nevertheless, I understand that as the law now stands there appears to be no alternative approach which would allow my unredacted report to be

published. For that reason I have reluctantly accepted that a redacted report should be published in order to bring this process to a close, and because there is a strong public interest in publishing its conclusions. I have had no responsibility for deciding what to redact.

I request that any publication should include this note as a supporting document. I also ask that any redactions be presented in such a way as to show precisely where and how much text has been removed, so that those reading the report may understand the extent to which the information they are provided with has been limited by legal constraints.

James Hamilton

20 March 2021